Indonesia

Chapter 1: Introduction

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Indonesia is an archipelagic nation consisting of more than 17,500 islands, and is home to more than 260 million people. It is a resource-rich country and a major exporter of minerals and agricultural products (including palm oil and rubber). It has a dynamic and growing middle class and a relatively young population (median age of 29).

On a nominal basis, its GDP is more than $1tn. Prior to the Covid-19 outbreak, the economy was growing at a relatively healthy rate of five per cent. Household consumption represents approximately 60 per cent of overall GDP.

The current Widodo administration has prioritised infrastructure development. The 2020 infrastructure-related budget amount is IDR 419tn (approximately US$26bn at the post-Covid-19 depressed exchange rate). The government will also focus on developing manufacturing capability and the tourism industry, as well as encouraging FDI in the country.

Chapter 2: The business environment

2.1 Government structure

Indonesia has a centralised system of government, with regional governments exercising a degree of autonomy. The power of the executive is vested in the Office of the President. The President, who is elected, is empowered to manage national affairs and relations with foreign powers. The legislative power is held by the House of Representatives (Dewan Perwakilan Rakyat or DPR) and the Regional Representatives (Dewan Perwakilan Rakyat Daerah – DPRD), the members of which are elected every five years. The judiciary consists of the Supreme Court and the Constitutional Court.

2.1.1 The executive

The Indonesian President is elected nationally by popular vote. In exercising its power, the President is assisted by government ministers, each of which is responsible for a particular area of government activity.

2.1.1 The legislature

Indonesia's legislative power is vested jointly in Parliament, called the DPR, and the President. Each has rights to propose legislative bills and approve laws.

The President may also issue Government Regulations (Peraturan Pemerintah) as required to implement laws. In urgent circumstances, the President may issue Government Regulations in Lieu of Law (Perpu), which must be ratified by the DPR at the next sitting, failing which they are deemed to be revoked. A Perpu becomes law upon ratification by the DPR.

At the regional level the authority to draft regulation is vested in both the regional parliament, called the DPRD, and the regional government (both at the provincial or municipal level, which includes the governor or mayor/regent).

Draft legislation becomes a regional regulation when jointly approved by the DPRD and the regional government.

2.1.3 The judiciary

The highest judicial power in Indonesia is vested in the Supreme Court. In addition to the Supreme Court, the Constitutional Court also holds an important role in upholding law and justice. Both institutions are designed to be independent agencies.

The Supreme Court

The Supreme Court has the authority to review any regulation or order made under law.

Indonesia adopts a three-tiered court system consisting of the Supreme Court, the High Courts and the district courts. The Supreme Court supervises the district courts and the High Courts, and hears appeals originating from the High Courts. District courts' decisions are appealed to the High Courts. Commercial Court judgments on bankruptcy and intellectual property are appealed directly to the Supreme Court.

In addition to High Courts and district courts, which are courts of general matters (having jurisdiction in both civil and criminal cases), there are also courts dealing with particular subject matter. Courts dealing with particular subject matter include the Commercial Court (dealing with bankruptcy and intellectual property matters), industrial relation court, administrative courts, military courts, religious courts and tax courts.

The Constitutional Court

The Constitutional Court has the authority to review laws for compliance and consistency with the Constitution and to rule on: (1) disputes concerning the authority of state institutions and agencies as provided for in the Constitution; (2) dissolution of a political party; and (3) the results of general elections.

2.2 Legal system

The country is organised as a constitutional democracy and its supreme legal norms are set forth in the Constitution of the Republic of Indonesia of 1945. It is a civil law country and does not apply the doctrine of binding precedent, although judgments of the High Courts and the Supreme Court are generally persuasive. The source of its law consists of a mixture of

Roman-Dutch tradition, indigenous traditional law (known as *adat* law) and Islamic law, as well as laws and regulations promulgated by the legislature (at the central and regional level) and the President, as well as the administrative rules and guidance issued by the governmental ministries and agencies. The hierarchical ordering of the recognised statutory laws in Indonesia is governed in Law No 12 of 2011, as follows:

- the Constitution;
- Decree of the People's Consultative Assembly (Ketetapan Majelis Permusyawaratan Rakyat;
- laws made by Parliament signed by the President, or Perpu;
- Government Regulation, promulgated by the President to implement a law, and can include penalties for breach only if those penalties are provided for in the relevant law;
- Presidential Regulation or Presidential Decrees issued as a public rule by the President;
- Provincial Regulation, Ministerial Regulations and Director General Regulations; and
- Regency/Municipal Regulation.

International treaties or agreements entered into by Indonesia with another country become part of the Indonesian legal system only after their ratification following a procedure prescribed by law; that is, Law No 37 on Foreign Affairs and Law No 24 of 2000 on International Treaty (as amended).

Chapter 3: Business and corporate structures

3.1 Common forms of legal entities

Business activity in Indonesia may be conducted through incorporated or unincorporated entities. Examples of unincorporated entities include professional partnerships, *firma* partnerships and limited partnerships. Incorporated entities include limited liability companies, cooperatives, associations, foundations, higher-education institutions and churches. Additionally, Indonesian law recognises special entities performing certain functions that do not fall neatly within the aforementioned forms. These include the Indonesian Red Cross (Palang Merah Indonesia), the Indonesia Deposit Insurance Corporation, Bank Indonesia and other institutions established based on law.

Business activity performed by foreign investors in Indonesia is generally conducted through a limited liability (non-public) foreign investment company (*penanaman modal asing* – PMA) established under Indonesian laws and domiciled within the territory of Indonesia.

Prior to incorporating a company in Indonesia, a foreign investor may choose to establish a representative office in Indonesia for the purposes of safeguarding its business interests and overseeing business development in Indonesia in anticipation of establishing a more permanent presence locally.

A representative office is not a legal entity in the eyes of Indonesian law. It exists under a licence from the Investment Coordination Board (Badan Koordinasi Penanaman Modal – BKPM). The licence is valid if the representative office continues to operate; however, it can be revoked at any time by the BKPM due to non-compliance.

A representative office's permissible scope of activity is quite narrow and may not seek earnings from sources in Indonesia or conduct trading activity.

3.2 Incorporation process

Although not specifically mandated under law, the establishment process usually begins with founders or shareholders jointly directing a notary public to reserve a company name with the Ministry of Law and Human Rights (MOLHR). The notary will electronically submit an application to MOLHR through a legal entity administration system (*sisminbakum*). The MOLHR will notify its approval or rejection (ie, another company has already registered the proposed name in the system).

The founders then need to appear in person to sign a deed of establishment (which contains the articles of the company) before the notary or appoint representing attorneys by virtue of POAs.

It is important to note that a limited liability company in Indonesia requires at least two founders and two shareholders. Founders and shareholders can either be natural persons or legal entities.

The deed of establishment then needs to be submitted (along with supporting documentation, including proof of capital injection) to the MOLHR for approval within 60 days of the signing date. This submission process will be administered by the relevant notary.

The company will obtain the legal entity status on the date of issuance of the MOLHR approval.

Subsequently, the newly established company needs to obtain a tax number, access to the government's Online Single Submission system and a company number (Nomor Induk Berusaha), as well as the relevant business licences.

3.3 Ongoing reporting and disclosure obligations

A PMA company is generally required to file the following (in addition to other disclosure obligations that may be applicable to its sector):

- a quarterly report on its capital investment activity to BKPM;
- an annual mandatory employment report to the Ministry of Manpower (MOM); and
- an annual financial report to the Ministry of Trade (Kementerian Perdagangan).

3.4 Management structures

Law No 40 of 2007 (the 'Company Law') provides for a mandatory two-tier management system consisting of a board of directors and board of commissioners.

The board of directors is responsible for the management of the company; is authorised to represent the company in its affairs; and is able to make policies and perform the day-to-day management of the company.

The board of commissioners exercises an oversight function vis-à-vis the board of directors, as well as providing the board of directors with ‘advice’. The board of commissioners does not have an executive function, although it may take over the management of the company for a limited time if no board of director members are available.

3.5 Director, officer and shareholder liability

Under the Company Law, members of the board of directors and board of commissioners can be held personally liable for the company’s losses if they are ‘at fault’ or ‘negligent’ in the performance of their duties in managing the company (if they are board of director members) or discharging their oversight function (if they are board of commissioner members) with the requisite good faith and responsibility.

Chapter 4: Takeovers

There is no dedicated and comprehensive ‘takeover code’ under Indonesian law. Instead, additional formalities and requirements that may arise in connection with a ‘change of control’ are found principally in the Indonesian Company Law, supplemented by additional provisions in the Labor Law and Competition Law.

From the perspective of the Company Law, the following requirements generally apply if there is a change in the holder of more than 50 per cent of the shares in a non-public company (in addition to the regular administrative requirements vis-à-vis shareholding change):

- announcement of the shareholding change in an Indonesian newspaper with nationwide circulation (30 days prior to the shareholder resolution approving the change);
- employee notification of the shareholding change (30 days prior to the shareholder resolution approving the change); and
- ensuring that no creditors object to the shareholding change.

From the Labor Law perspective, the occurrence of a ‘change of control’ in the relevant company triggers certain rights to employees. Specifically, employees may decide not to continue their employment with the company post-completion, and in this context severance is payable. Therefore, in practice, the following step also needs to be considered during the documentation process and properly executed subsequently:

- settling any outstanding severance payment to employees who wish to terminate their employment contract due to shareholding change (if any).

In a public company setting, in addition to the public disclosure requirement (by way of a newspaper announcement) and Financial Services Authority (Otoritas Jasa Keuangan – OJK)/stock exchange notification rule, a change of ‘controller’ in a Indonesian public company triggers the general offer requirement pursuant to OJK Regulation No 9/2018 (‘POJK 18’). A controller is any party: (1) owning more than 50 per cent of the voting shares of an Indonesian public company; or (2) with the ability to determine, directly or indirectly by any means, the management and/or policy of an Indonesian public company.

If there is an element of ‘conflict’ or if the transaction is performed between affiliates, additional disclosure and valuation steps need to be complied with.

Chapter 5: Foreign investment

Law No 25 of 2007 concerning Investment (the ‘Investment Law’) regulates FDI by granting a right of entry to foreign businesses through licensing procedures principally controlled by the BKPM. The entity through which business activity is conducted generally takes the form of a (non-public) limited liability PMA under Indonesian law and domiciled within the territory of the Republic of Indonesia. Foreign investors’ maximum ownership interest in a PMA is limited in certain industries, depending upon the targeted investment sectors or fields. The list of business sectors that are restricted or ‘closed’ from foreign ownership is contained in the Regulation of the President of the Republic of Indonesia No 44 of 2016 concerning the Lists of Business Fields that are Closed/Conditionally Open to Investments (commonly known as the ‘Negative List’).

Certain industries are overseen by their respective ministries or regulatory authorities, with the BKPM exercising a more limited role. These industries include oil and gas (managed through the Ministry of Energy and Mineral Resources and its agencies including SKKMigas), banking (regulated by the Central Bank of Indonesia), mining (managed through the Ministry of Mining and Mineral Resources), insurance (regulated by the Ministry of Finance and its agencies) and several others (including forestry, shipping, seaports and telecommunication).

All investors, regardless of nationality, are given several rights/protection under the Investment Law, inter alia, as follows:

- The government shall treat all investors, either foreign or domestic, equally.
- The government shall take no measures of nationalisation or expropriation against the proprietary rights of investors, unless provided by law. In the event that the government takes measures to nationalise, expropriate or otherwise infringe investors’ rights, the government is required to pay a compensation amount established by market value.
- Investors are entitled to move their assets freely in accordance with the prevailing laws and regulations.
- Investors are entitled to transfer and repatriate in foreign currency, inter alia, capital, profits, bank interest, dividends, other income and so on.
- Investors are entitled to employ expatriates for certain positions, subject to laws and regulations.

Additionally, investors are also entitled to: (1) certainty of right, law and protection; (2) transparent information on their business sector; and (3) rights to services and various forms of facilities in accordance with the prevailing laws and regulations.

Chapter 6: Restructuring and insolvency

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6.1 Introduction

In practice, restructuring in Indonesia can be done either out of court, which is not formally regulated, or under court-supervised proceedings, regulated under Law No 37 of 2004 on Bankruptcy and Suspension of Payments (Penundaan Kewajiban Pembayaran Utang – PKPU) (the 'Bankruptcy Law').

Insolvency in Indonesia, on the other hand, commonly refers to court-supervised bankruptcy proceedings, which are regulated by the Bankruptcy Law, and dissolution and liquidation, which are regulated by Law No 40 of 2007 on Limited Liability Companies (the 'Company Law') and do not constitute court-supervised proceedings. For an entity operating in certain sectors, such as banking, insurance, pension funds and other financial activity, there are specific sets of regulations that regulate the dissolution and liquidation of such an entity, as well as an earlier supervision phase prior to entering into such an entity dissolution, in addition to the Company Law.

The term 'insolvency' as used in the Bankruptcy Law has a different meaning to many other legal systems. It does not constitute a test for bankruptcy declaration, but refers to the specific concept of 'the state of being insolvent at law', which occurs during bankruptcy or PKPU proceedings.

Under the Bankruptcy Law, there are two types of court-supervised proceedings applicable to Indonesian individuals, limited liability companies and limited partnerships: (1) bankruptcy proceedings that aim at liquidation; and (2) PKPU proceedings for the continuation of the business. Nevertheless, both are intertwined as restructuring can emerge from bankruptcy proceedings and liquidation can be the result of PKPU proceedings. In both, a debtor can submit a composition plan to its creditors to restructure its debts, which in practice may comprise a haircut, instalments, extension of maturity (ie, grace period), debt-to-equity conversion, potential investment plan from the investor or any combination of these.

The use of court-supervised proceedings for restructuring grants a debtor the ability to take the benefit of, among others, the following features: (1) automatic stay (ie, the secured creditors are unable to enforce their collateral during the stay period); and (2) cramdown (ie, the restructuring will bind all creditors except for the dissenting secured creditors in the PKPU proceedings or the secured creditors in the bankruptcy proceedings). However, if restructuring under court-supervised proceedings is not successful, the debtor's estate will be liquidated.

6.2 Court-supervised proceedings (applicable to bankruptcy and Penundaan Kewajiban Pembayaran Utang proceedings)

6.2.1 Pre-bankruptcy/PKPU

The Bankruptcy Law provides that a bankruptcy and Penundaan Kewajiban Pembayaran Utang – PKPU petition may be filed by: (1) one or more creditors; (2) the debtor; (3) the public prosecutor, if it is in the public interest; and (4) particular institutions for certain debtors: (i) banks, securities companies, stock exchanges, clearing and guarantee institutions, depository and settlement institutions, insurance and reinsurance companies, pension funds by the OJK; and (ii) state-owned companies operating in the public interest, by the Minister of Finance (MoF).

The pre-conditions for a bankruptcy/PKPU declaration to be granted are: (1) the debtor has at least two creditors; (2) the debtor has failed to pay at least one of its debts that is due and payable; and (3) the conditions above can be summarily proven. In this regard, any dispute on the amount of debt being claimed does not mean the debt's existence cannot be summarily proven.

The petition must be filed with the Commercial Court that has jurisdiction over the legal domicile of the debtor. Currently, there are five Commercial Courts in Indonesia, which are the Commercial Courts at the District Courts of: (1) Central Jakarta; (2) Medan; (3) Semarang; (4) Surabaya; and (5) Makassar.

With respect to a bankruptcy petition, the Commercial Court must make a decision within 60 days of the petition being filed. The decision can be appealed to the Supreme Court in cassation within eight days of the court's decision. The Commercial Court Registrar must deliver the cassation petition dossiers to the Supreme Court within 14 days of registration of the petition. Within 60 calendar days of the cassation petition being received by the Supreme Court,[1] it must decide whether to affirm or overturn the Commercial Court decision. In certain cases, a case review (*peninjauan kembali*) can be made against a final and binding Commercial Court decision (not appealed within the cassation filing period) or a Supreme Court decision in cassation.

With respect to a PKPU petition, the Commercial Court must make a decision either: (1) three days from the filing of a voluntary PKPU petition filed by the debtor; or (2) 20 days from the filing of an involuntary PKPU petition filed by a party other than the debtor. No cassation can be submitted against a Commercial Court decision on a PKPU petition, except by the Attorney-General for legal reasons (*kepentingan hukum*).

6.2.2 Post-bankruptcy/PKPU declaration

Bankruptcy proceedings

With respect to bankruptcy proceedings, the Bankruptcy Law provides that if the Commercial Court approves the petition, it is required to render a bankruptcy declaration and appoint one or more receiver(s) (*kurator*) and a supervisory judge (*hakim pengawas*). In bankruptcy proceedings, after the bankruptcy declaration is rendered by the Commercial Court, the affairs of the bankrupt debtor are handled and managed by one or more court-appointed receivers. The directors of the debtor (in the form of a legal entity) lose their power to manage the bankrupt debtor's affairs and estate as that power is given to the receiver. The receiver is subject to the supervision of the court-appointed supervisory judge. On the issuance of the Commercial Court decision declaring the bankruptcy of the debtor, an automatic stay or moratorium of the bankrupt debtor's estate will be triggered. The rights of secured creditors to enforce security (and the rights of any third parties to claim assets that are under the control of the bankrupt debtor or the receiver) are subject to an automatic stay for a maximum of 90 days in the bankruptcy proceedings. Under the proceedings, the automatic stay may be less than 90 days if the bankruptcy proceedings are terminated earlier or if the debtor enters a state of insolvency.

Based on the Bankruptcy Law and practice, the timeline following the bankruptcy declaration can be summarised as follows:

Table 1

Bankruptcy timeline	**Schedule**
Within 14 days of bankruptcy declaration	Supervisory judge to render a decision on: (1) the first creditors meeting; (2) deadline for the creditors to submit claims; and (3) claim verification meetings.
Within 5 days of the supervisory judge's decision	Receiver to announce such dates to all known creditors by letter and publication in at least two daily newspapers.
Within 1–2 weeks of bankruptcy declaration	First creditors meeting to be held.
Within 2.5–3.5 weeks of bankruptcy declaration	Deadline for the creditors to submit claims.
Within 5–7 weeks of bankruptcy declaration	Claim verification meeting is to be held.
Scenario A: The bankrupt debtor submits a composition plan at the claim verification meeting.	
A few months thereafter (could last five months or more)	• Composition plan discussions (if the bankrupt debtor offers a composition plan). • Voting on the composition plan by unsecured creditors held. • Decision to approve the composition plan requires the affirmative votes of: (1) more than half of the unsecured creditors present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and (2) who represent at least two-thirds of the total amount of the unsecured claims of the unsecured creditors present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged ('Bankruptcy Voting Quorum Requirements').
Two possible outcome scenarios:	1. Composition plan is approved by the creditors under the Bankruptcy Voting Quorum Requirements and ratified by the Commercial Court: bankruptcy proceedings are terminated and bankruptcy proceedings timeline is completed (as debtor's debts are restructured under the terms and conditions of the ratified composition plan). 2. Composition plan is rejected by the creditors (as it does not meet the Bankruptcy Voting Quorum Requirements) or is approved by the creditors but not ratified by the Commercial Court: the bankruptcy estate is declared to be in a state of insolvency and the bankruptcy proceedings timeline continues (see Scenario B).
Scenario B: The bankrupt debtor does not submit a composition plan at the claim verification meeting or Scenario A 2. occurs: the bankruptcy estate is in a state of insolvency.	
Within 1–5+ years of the state of insolvency, depending upon the complexities of the bankruptcy assets to be liquidated, such as challenges from a third party and so on.	Process to liquidate the bankruptcy estate and distribute the liquidation proceeds to the creditors in line with the prevailing laws and regulations up to completion.

PKPU PROCEEDINGS

With respect to PKPU proceedings, the Bankruptcy Law provides that if the Commercial Court approves the petition, the Commercial Court is required by law to grant the debtor a provisional PKPU for up to 45 days and appoint one or more administrator(s) (*pengurus*) and a supervisory judge. The 45-day provisional PKPU may be extended up to a maximum of 270 days from the date the provisional PKPU is granted (and becomes a permanent PKPU).

After the PKPU declaration is rendered by the Commercial Court, the affairs and estate of a corporate debtor in PKPU proceedings are handled and managed jointly by the director(s) of the company and one or more court-appointed administrators. The administrator is subject to the supervision of the court-appointed supervisory judge. In this regard, the debtor will still be entitled to manage and dispose of its assets, but only jointly with the administrator. The debtor cannot engage in any management or ownership action over all or part of its assets without the approval of the administrator. Any violation of this provision will entitle the administrator to take whatever action is required to ensure that the debtor's assets are not jeopardised by the debtor's action. Performance by the debtor, without the administrator's consent, of the debtor's obligation arising after the commencement of the PKPU proceedings, can only be imposed on the debtor's assets to the extent that the debtor's assets gain advantage/benefit from this performance.

Upon the issuance of the Commercial Court decision granting the provisional PKPU, an automatic stay or moratorium of the debtor's estate will be triggered. The rights of secured creditors to enforce security (and the rights of a third party to claim its assets that are under the control of the debtor under the PKPU or the administrator) are subject to an automatic stay for the entire duration of the PKPU proceedings.

Based on the Bankruptcy Law and practice, the timeline that follows the provisional PKPU declaration can be summarised as follows:

Table 2

Provisional PKPU timeline	Schedule
Within 1–5 days of PKPU declaration	Supervisory judge to render a decision on: (1) the first creditors meeting; (2) the deadline for the creditors to submit claims; (3) the claim verification meetings; and (4) the judge deliberation hearing.
Within 1–5 days of the supervisory judge decision	Administrator to announce such dates to all known creditors by letter and publication in at least two daily newspapers.
Within 1–2 weeks of PKPU declaration	First creditors meeting held.
Within 2–3.5 weeks of PKPU declaration	Deadline for creditors to submit claims.
Within 3.5–5.5 weeks of PKPU declaration	Claim verification meeting held.
Within 4–6 weeks of PKPU declaration	Composition plan discussions/voting meeting or PKPU extension voting meeting held. In the voting process at the creditors' meeting, the decision to approve the composition plan or to extend the PKPU period or to grant a permanent PKPU requires the affirmative cumulative votes of ('PKPU Voting Quorum Requirements'): 1. (i) more than half of the unsecured creditors, who are present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and (ii) who represent at least two-thirds of the total amount of the unsecured claims of the unsecured creditors present or represented at the meeting, whose rights are acknowledged or provisionally acknowledged; and 2. (i) more than half of the secured creditors, who are present or represented at the meeting; and (ii) who represent at least two-thirds of the total amount of secured claims of the secured creditors present or represented at the meeting.
Within 29–44 days of the PKPU declaration	Judge deliberation hearing.

Three possible scenarios:	1. (i) Debtor's request to extend the PKPU proceedings and convert the Provisional PKPU into a Permanent PKPU; or (ii) composition plan (a) is rejected by the creditors (as it does not meet the PKPU Voting Quorum Requirements); or (b) is approved by the creditors but not ratified by the Commercial Court: the PKPU proceedings are terminated and the debtor is declared bankrupt and the bankruptcy estate is automatically declared to be in a state of insolvency (see the Bankruptcy timeline for Scenario B in table one). 2. Composition plan approved by the creditors under the PKPU Voting Quorum Requirements and ratified by the Commercial Court in the judge deliberation hearing: the PKPU proceedings terminated and PKPU proceedings timeline completed (as the debtor's debts are restructured under the terms and conditions of the ratified composition plan). 3. Debtor's request to extend provisional PKPU proceedings approved by creditors either unanimously or under the PKPU Voting Quorum Requirements and ratified by the Commercial Court: PKPU proceedings timeline continues for a maximum of 270 days: see Permanent PKPU timeline below.

Table 3

Permanent PKPU timeline	
The Permanent PKPU can be granted for 15–90 days (or any other number of days decided by the Commercial Court) following the Provisional PKPU and can be extended several times. The total PKPU proceedings (which include the Provisional PKPU and the Permanent PKPU (and its extension(s)) can be granted for a maximum of 270 days.	• Composition plan discussions. • Claim verification process continues (if not already completed). • Voting on the composition plan or debtor's request to extend the Permanent PKPU. • Judge deliberation hearing with three possible scenarios in the Provisional PKPU timeline as mentioned above.
Last Permanent PKPU Extension (reaching the maximum 270-day period – if the composition plan cannot be approved by the creditors earlier) Scenario 1 (ii) a or Scenario 1 (ii) b, or Scenario 2 in the Provisional PKPU timeline mentioned above are applicable for the final outcome.	• Composition plan discussions. • Voting for the composition plan. – If the composition plan is approved, the dissenting secured creditors must be compensated with the lower value of either: the collateral (selected from the collateral value determined by the collateral documents or collateral value determined by appraiser appointed by the supervisory judge); or the actual claim directly secured by *in rem* security rights. • Judge deliberation hearing with either Scenario 1 (ii) a or Scenario 1 (ii) b, or Scenario 2 in the Provisional PKPU timeline.

6.3 Dissolution and liquidation process

According to the Company Law, a company may be dissolved due to/based on the following:

- a resolution of the general meeting of shareholders (GMS);
- the duration of the company stipulated in the articles of association has expired (and the dissolution occurs by law);
- a court order;
- upon termination of bankruptcy (proceedings) by a final and binding decision of the Commercial Court, as the bankruptcy estate of the company is insufficient to cover the costs of the bankruptcy;

- the bankruptcy estate of the company is declared to be in a state of insolvency as governed by the Bankruptcy Law; or
- the company's business permit has been revoked, thus requiring the company to implement liquidation under the laws and regulations.

Any of the above will constitute a milestone for the commencement of the dissolution and liquidation process.

With respect to the dissolution of a company that is started on the basis of a court order, the District Court (Pengadilan Negeri) may dissolve a company (and will appoint a liquidator if it declares the company dissolved) based upon the following:

- a request of the public prosecutor on the grounds that the company has violated the public interest or the company has committed an act that violates laws and regulations;
- a request from an interested party on the grounds that there is a legal defect in the deed of establishment; or
- a request from the shareholders, the board of directors or board of commissioners on the grounds that the company can no longer continue.

The criteria that mean a company 'can no longer continue' include:

- a company does not perform any business activity (is inactive/dormant) for three years or more, as substantiated by a letter of notification delivered to the tax authority;
- the addresses or whereabouts of the majority of the shareholders are no longer known, despite a notice published in newspaper advertisements, so that a GMS cannot be held;
- where the proportion of the ownership of shares in a company is such that the GMS is unable to adopt a valid resolution, for example, two groups of shareholders each own 50 per cent of the shares; or
- the assets of the company have decreased/depreciated such that, with the existing assets, the company is no longer able to continue its business activity.

The dissolution of a company must be followed by liquidation performed by a liquidator. After its dissolution, the company may not undertake any legal act unless it is required to settle its assets as part of the liquidation. The obligations of the liquidator in settling the company's assets in liquidation must include the following:

- the recording and gathering together of the company's assets and liabilities;
- an announcement of the plan for the distribution of assets/proceeds resulting from the liquidation process in a daily newspaper and State Gazette of the Republic of Indonesia;
- payment of its creditors;
- payment of the remaining balance of the assets resulting from liquidation to the shareholders; and

- other actions required to be undertaken to implement the settlement of the company's assets, including the termination of outstanding contracts and employees, tax settlement and revocation of the tax identification number, revocation of licence(s), collection of receivables, sale of assets and voluntary filing of a bankruptcy petition if the dissolved company is insolvent.

The Company Law does not prescribe a strict timeline for a dissolution and liquidation process to be completed.

Chapter 7: Employment law

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7.1 Employee rights and protections

7.1.1 Industrial relations

Employment relationships in Indonesia are regulated by Law No 13 of 2003 regarding Manpower (the 'Manpower Law') and the policies of the MOM. Any individual employment relationship is also likely to be governed by a company regulation or collective labour agreement and an individual employment agreement.

The Manpower Law requires any employer with more than ten employees to have a company regulation, which must be approved by the local Manpower Services Office. A company regulation generally repeats relevant provisions of the Manpower Law, which are mandatory in nature, while adding any matters the employer wishes to apply to its employees generally.

An employment agreement usually contains further details beyond the company regulation, as the employer may agree to for the benefit of any individual employee.

The employees of any employer with more than ten employees can unionise. Unions are enterprise-based in Indonesia. If employees choose to unionise, the union and the employer may agree to a collective labour agreement. The collective labour agreement will replace the company regulation.

Where any provisions governing an employment relationship are contradictory, the order of precedence, from highest to lowest, is: (1) the Manpower Law; (2) company regulation/collective labour agreement; and (3) employment agreement.

7.1.2 Permanent employment versus fixed-term employment

There are two main types of employment under the Manpower Law: permanent employment and fixed-term employment. These two types of employment are regulated differently.

Permanent employees are employed for an indefinite period. An employer may impose a maximum three-month probationary period on new permanent employment hires. If the probationary period was agreed in writing in an employment agreement, the employer may terminate the employment without notice, reason or obligation at any time during the probationary period.

Fixed-term employees are employed for a fixed period. A fixed-term employment agreement is only permitted for work that is temporary, completed in a short period of time, seasonal or related to a new product, a new activity or a supplemental product that is still experimental or in the exploration stage. Unlike in the case of permanent employees, an employer cannot impose a probationary period on fixed-term employees.

7.1.3 Termination

In Indonesia an employer may not generally unilaterally terminate an employee. There are a limited number of exceptions, which are termination during probation, the voluntary written resignation by the employee, retirement, expiration of the employee's fixed-term employment contract and the death of the employee.

If an employer wishes to terminate an employee and none of the above circumstances apply, the employer may either:

- negotiate and settle a separation benefits package with the employee, leading to the employee voluntarily signing a mutual termination agreement; or
- suspend the employee on full salary and follow the formal termination process mandated by law, namely mandatory non-binding mediation through the local Manpower Services Office followed by labour court proceedings to obtain court approval for the proposed termination.

The former option is generally much faster and less costly than the latter.

7.1.4 Employee statutory rights

Indonesian laws and regulations provide employees with statutory rights governing working hours, overtime payments, religious holiday allowances, leaves of absence and social security.

The Manpower Law stipulates normal working hours of not more than eight hours per day and 40 hours per week based on a five-day workweek, or seven hours per day and 40 hours per week based on a six-day workweek. These statutory working hours do not apply to certain sectors, such as the offshore oil and gas sector.

Any overtime of more than three hours per day and/or 14 hours per week requires the employer to pay for overtime rates using the formula set forth in MOM Decree No KEP.102/MEN/VII/2004 regarding Overtime Work and Overtime Pay.

7.1.5 Religious holiday allowance

Employees receive a religious holiday allowance as regulated by MOM Reg No 6 of 2016 regarding Religious Holiday Allowance for Workers/Laborers in Companies. The religious holiday allowance is paid to workers who have been employed for at least one full month prior to the relevant religious holiday (in Indonesia, Idul Fitri or Christmas), whether based on a fixed-term or permanent employment contract.

Employees who have been employed for at least 12 consecutive months are entitled to a minimum religious holiday allowance equal to one month's salary. Employees who have worked for one month but less than 12 months will receive a religious holiday allowance on a prorated basis, using the following formula: (working period/12) × one month's salary.

The religious holiday allowance is provided once a year, at the latest seven days before the particular religious holiday (again, Idul Fitri or Christmas) applicable to a given worker.

7.1.6 Leaves of absence

Employees are entitled to a minimum of 12 days of annual leave per year. In addition to annual leave, employees are entitled to paid sick leave, family and other medical leave, and pregnancy/paternal leave.

In the event of any sick leave, full wages must be paid for the first four months of sick leave; 75 per cent of full wages for the second four months; 50 per cent for the third four months; and 25 per cent thereafter until the employer terminates the employee.

The Manpower Law also allows leave for family and other medical purposes, during which the employee is entitled to his/her salary, as follows:

- the employee's wedding (three days);
- circumcision of the employee's child (two days);
- baptism of the employee's child (two days);
- marriage of a son or daughter (two days);
- death of a spouse, parent, parent-in-law, or child or son/daughter-in-law (two days);
- birth of a child or the miscarriage of the employee's wife (two days); and
- death of a family member living in the same house as the employee (one day).

Additionally, a pregnant employee is entitled to three months of maternity leave with full pay. In the event of a miscarriage, a female employee will be entitled to six weeks of paid leave. Paternity leave of two days is given to the father upon the birth of a child.

7.1.7 Social security

Pursuant to Law No 24 of 2011 regarding the Social Security Organizing Body (Badan Penyelenggara Jaminan Sosial – BPJS) (Law No 24), employers must enrol their employees working in Indonesia for a period of at least six months in BPJS social security programmes.

There are two kinds of BPJS social security programmes: BPJS Health and BPJS Employment. BJPS Health manages the health security programme and BPJS Employment oversees work accident security, old age security, pension security and death security.

Indonesian employers must make financial contributions to the BPJS social security system on the employees' behalf.

7.2 Statutory contributions and minimum wage

7.2.1 Statutory BPJS contributions

There are different contributions for the different types of BPJS programmes as discussed in section 7.1.7.

7.2.2 BPJS Health

The health security contribution, according to Presidential Regulation No 82 of 2018 regarding Health Security, as amended by Presidential Regulation No 75 of 2019, is five per cent of the employee's monthly salary. The employer pays four per cent of the contribution and the remaining one per cent is paid by deduction from the employee's salary. The maximum monthly salary for calculating the BPJS Health contribution is IDR 12m.

7.2.3 BPJS Employment: Work Accident Security

The Work Accident Security contribution is stipulated in Government Regulation No 44 of 2015 regarding the Implementation of Work Accident Security and Death Security Programmes, as amended by Government Regulation No 82 of 2019 (GR 44/2015). The amount depends on the work environment risk level, as follows:

- lowest risk: 0.24 per cent of the employee's monthly salary;
- low risk: 0.54 per cent of the employee's monthly salary;
- middle risk: 0.89 per cent of the employee's monthly salary;
- high risk: 1.27 per cent of the employee's monthly salary; and
- highest risk: 1.74 per cent of the employee's monthly salary.

7.2.4 BPJS Employment: Death Security

Pursuant to GR 44/2015, the contribution for the Death Security Program is 0.30 per cent of the employee's monthly salary.

7.2.5 BPJS Employment: Pension Security

Government Regulation No 45 of 2015 regarding the Implementation of Pension Security sets the Pension Security contribution at two per cent of the monthly salary of the relevant employee. The employer or the company is to pay two per cent of that amount and the remaining one per cent is paid by deduction from the employee's salary.

7.2.6 BPJS Employment: Old Age Security

The contribution to the Old Age Security Program is stipulated in Government Regulation No 46 of 2015 regarding the Implementation of the Old Age Security Program, as amended by Government Regulation

No 60 of 2015. The amount is 5.7 per cent of the monthly salary of the employee, with 3.7 per cent paid by the employer or the company and two per cent paid by deduction from the employee's salary.

7.2.7 Minimum wage

Minimum wage is generally regulated under MOM Regulation No 15 of 2018 regarding Minimum Wage. Wages are defined as basic earnings (salary) plus regular allowances. Each province can set its own minimum wage each year, which must be complied with by employers in that province.

For example, the 2020 monthly minimum wage in Daerah Khusus Ibukota Jakarta was set at IDR 4,267,349.906, pursuant to Governor of Jakarta Regulation No 121 of 2020 regarding Provincial Minimum Wage for 2020.

Under the Manpower Law, any company paying a salary lower than the applicable minimum without MOM approval may be subject to criminal sanctions in the form of one to four years imprisonment and/or a fine of IDR 100m to IDR 400m, unless it has been given approval to do so.

An employer that is unable to meet the regional minimum wage requirement may ask the MOM or other appointed official, directly or through a business association, to suspend the application of the applicable minimum wage for that employer.

7.3 Work permits and visas

As a basic rule, the government has specified the sectors and positions in Indonesia that are open to expatriate employees. MOM Decree No 228 of 2019 regarding Certain Positions Permissible for Expatriates stipulates that 18 sectors are open to expatriate employees. These sectors include construction, real estate, education, processing industry, and information and telecommunications, among others. The same regulation stipulates 187 positions open to expatriates, for example, country manager, financial manager and business development manager.

The MOM has also provided a negative list of positions closed to expatriates, under MOM Decree No 349 of 2019 regarding Certain Positions that Are Not Permissible for Expatriates. The negative list consists of 18 positions related to human resources, including but not limited to human resources manager, career adviser, employee mediator and occupational safety specialist.

Expatriates who intend to work in Indonesia require a work permit, which the employer is required to obtain on the expatriate's behalf. Employers obtain the work permit through an online system known as the TKA Online System, which is managed by the MOM.

7.3.1 Rencana Penggunaan Tenaga Kerja Asing and notification

A work permit for an expatriate employee is comprised of two parts: (1) an Expatriate Manpower Utilisation Plan (Rencana Penggunaan Tenaga Kerja Asing – RPTKA): and (2) a Notification. Both the RPTKA and the Notification are issued by the MOM.

The RPTKA constitutes MOM approval for an employer to open a job position to expatriate hiring generally, while the Notification constitutes MOM approval to fill that position with an identified expatriate employee.

Any expatriate entering Indonesia to engage in work activity without a work permit, even if only temporarily, may be detained and deported. Since there is no legal definition of 'work', any activity apart from business negotiations leading to a trade or investment transaction must be carefully considered before being undertaken by expatriates in Indonesia.

7.3.2 Visas and stay permits

Minister of Law and Human Rights Regulation No 16 of 2018 regarding Procedures for the Issuance of Visas and Stay Permits for Expatriates requires that any expatriate intending to reside in Indonesia obtain a limited stay permit (*visa izin tinggal terbatas* – VITAS) from the Immigration Office. Any expatriate residing in Indonesia for work, together with his/her family members, must hold a VITAS in addition to the work permit.

Expatriates entering Indonesia for brief periods to engage in business meetings or negotiations do not require a VITAS, but may instead do so on a visitor visa. There are three types of visitor visa: single-entry visitor visa, multiple-entry visitor visa and visa on arrival.

In practice, a visitor visa used for business purposes is often referred to, including by Indonesian embassies or consular offices, as a 'business visa'. However, the actual wording in the regulations is 'visitor visa' (*visa kunjungan*), based on Law No 6 of 2011 regarding Immigration (Immigration Law) and Government Regulation No 31 of 2013 regarding the Implementing Regulation for the Immigration Law, as amended by Government Regulation No 26 of 2016.

Chapter 8: Tax law

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Tax law regimes in Indonesia are spread out across a number of laws. This includes corporate income tax, IIT, VAT, and/or land and building tax. The focus of this chapter is the general law on tax regimes in Indonesia which in turn comprise tax disputes and tax issues.

8.1 Overview of the law and regulatory framework

The general rules that regulate how Indonesia runs its tax regimes are based on Law No 6 of 1983 as most recently amended by Law No 16 of 2009 concerning General Terms and Procedure for Taxation (Ketentuan Umum dan Tata Cara Perpajakan – KUP). KUP regulates, among others, the tax identity number (Nomor Pokok Wajib Pajak), confirmation and revocation as a taxable company (Pengusaha Kena Pajak), tax payment procedure and/or general rules about the taxable object, which are ruled by the prevailing laws. KUP also regulates the general rule of the tax dispute procedure concerning tax objections, tax appeals and the reconsideration process. KUP regulates a general term for any tax procedure in Indonesia, except where it is regulated separately in other laws.

Under Indonesian law, tax regimes are considered as administrative law; therefore, they will generally regulate the procedure of reporting, filing a complaint, calculating tax, among others, but the violation of any tax obligation is regulated by another specific law. For example, if there is any indication of criminal activity, the case will be subject to a district court should any criminal proceeding be needed.

In general terms, tax law in Indonesia consists of several important laws, as outlined below:

8.1.1 Law No 36 of 2008 concerning Income Tax Law

Under the Income Tax Law, the tax subject consists of individual/undivided inheritance as a unit in lieu of the beneficiaries, entity and permanent establishment. For taxation purposes, a permanent establishment will be treated as a corporate taxpayer. Indonesia also recognises the WHT system for income tax (*pajak penghasilan*).

Taxation in Indonesia is determined on the basis of residency, that is, a resident and non-resident taxpayer. The Indonesian taxation system is also based on the self-assessment system, where the taxpayer will be entrusted to complete a self-assessment to calculate its tax obligation.

'Resident taxpayer' means: (1) an individual who resides in Indonesia and has been present in Indonesia for more than 183 days within any 12-month period, or an individual who has been residing in Indonesia within a particular taxable year and intends to reside in Indonesia; (2) an entity established or domiciled in Indonesia, except for a part of a government body that fulfils required criteria, such as its establishment is pursuant to laws, it is financed by a state budget or local government budget, its revenues are included in a state budget or local government budget and its bookkeeping is audited by a government auditor; or (3) any undivided inheritance as a unit in lieu of beneficiaries.

'Non-resident taxpayer' means: (1) an individual who does not reside in Indonesia and has been present in Indonesia for no more than 183 days within any 12-month period, or an entity that is not established and is not domiciled in Indonesia conducting business or carrying out activity through a permanent establishment in Indonesia; and (2) any individual who does not reside in Indonesia and has been present in Indonesia for no more than 183 days within any 12-month period, or an entity that is established outside of Indonesia and is not domiciled in Indonesia, which may receive or accrue activity through a permanent establishment.

There are two categories of income tax law: IIT and corporate income tax.

Individual income tax

IIT will be charged using progressive rates over the taxable annual income, which range from five per cent to 30 per cent. The following progressive rates are charged to taxable annual individual income:

- up to IDR 50m will charged at five per cent;
- above IDR 50m will be charged at 15 per cent;

- above IDR 250m will be charged at 25 per cent rate;
- above IDR 500m will be charged at 30 per cent.

The tax rates above apply to an Indonesian resident taxpayer. For non-residents, a tax rate of 20 per cent of the gross amount is applied. However, the tax rate may vary depending on the tax treaty between Indonesia and the country of origin of the non-resident.

Corporate income tax

Corporate income tax applies to companies domiciled in Indonesia and foreign companies that have a permanent establishment in Indonesia and carry on their business activity through a local entity. Corporate income tax will be charged at 25 per cent, with exemptions as follows:

- companies listed on the Indonesia Stock Exchange with at least 40 per cent of shares offered to the public will be charged at 20 per cent;
- SMEs with an annual gross turnover below IDR 50 bn will be charged at the 12.5 per cent rate;
- companies with an annual gross turnover below IDR 4.8bn will be charged at one per cent.

Companies investing in certain business sectors and/or certain less developed regions can also be granted tax facilities in the form of an additional net income tax reduction, accelerated depreciation and amortisation, with the period of loss carry forward extended up to ten years (certain additions might apply for certain requirements) and/or income tax on dividends at a ten per cent rate unless the tax treaty regulates a lower rate. Also, a taxpayer making a new investment in a pioneer industry but not entitled to any tax facilities under Article 31A of the Income Tax Law can also obtain an exemption or reduction of income tax based on Indonesia's Investment Law No 25 of 2007.

8.1.2 Law No 42 of 2009 concerning Value Added Tax and Luxury Goods Sales Tax – the third and latest Amendment of Law No 8 of 1983

VAT

VAT (*pajak pertambahan nilai*) is tax charged for any taxable goods or services in their circulation from the producer to the consumer. Indonesia imposes a single VAT rate of ten per cent. However, VAT as low as zero per cent will be applied for the export of tangible taxable goods, intangible taxable goods and taxable services.

Under this law, goods shall be tangible goods that due to their nature and legal status could be chattels, real property and intangible goods. A taxable entrepreneur performs the delivery of taxable goods/a taxable service that is taxed under this law.

Under Law No 42 of 2009 Article 4 section (1), VAT shall be imposed on:

- delivery of taxable goods inside the custom area by the entrepreneur;
- import of taxable goods;
- utilisation of taxable services from outside the customs area by the entrepreneur;

- utilisation of intangible taxable goods from outside the custom area inside the custom area;
- utilisation of intangible taxable services from outside or inside the custom area;
- export of tangible taxable goods by the taxable entrepreneur;
- export of intangible taxable goods by the taxable entrepreneur; and
- export of intangible taxable services by the taxable entrepreneur.

The type of goods subject to VAT shall be certain goods within the following groups:

- mining and drilling products taken directly from their sources;
- staple goods mostly required by people;
- food and beverages served in a hotel, restaurant, food shop or shop, or similar, including dine-in and take-out food, and food and beverages presented by a catering company; and
- money, gold bullion and securities.

In addition, VAT law adopts a negative list approach. Services on which VAT is not imposed include medical services, social services, courier services with stamps, financial services, insurance services, religious services, education services, art and entertainment services, non-advertisement broadcasting services, land and water transportation services, as well as domestic air transport services that are an integral part of international air transport services, employment services, hospitality services, services that are provided by the government in the framework of the implementation of general administration, parking services, public telephone services that use coins, remittance services by postal money orders and catering services.

Luxury Goods Sales Tax

Luxury Goods Sales Tax (LGST) shall be imposed on the delivery of taxable goods categorised as luxury goods by the entrepreneur inside the custom area of its business activity, or the work and import of taxable goods categorised as luxury goods.

The tariff of LGST is at least ten per cent and no more than 200 per cent. Further, the export of taxable goods categorised as luxury goods shall be subject to ten per cent tax.

VAT or VAT and LGST on returned taxable goods may be deducted from the payable VAT or VAT and LGST within the tax period in which the taxable goods are returned.

8.1.3 Law No 12 of 1994 concerning Land and Building Tax as the Latest Amendment of Law No 12 of 1985

The subject of Land and Building Tax is any individual or entity that owns a right upon a land, and/or benefits from it, and/or owns, controls and/or benefits from the building. Land and Building Tax applies to the taxable object, such as rice fields, plantations, mining or residential and business buildings.

The basis for Land and Building Tax is the sales value of the taxable object (*Nilai Jual Objek Pajak* – NJOP). NJOP is the average price or market price of the taxable object. NJOP for land is calculated based on location, utilisation, zone allotment and environmental condition. NJOP for buildings is calculated based on the building construction material, engineering, location and environmental condition.

The tax rate for a taxable object of land and buildings amounts to 0.5 per cent. The tax rate is charged based on the sales price of the taxable price (*Nilai Jual Kena Pajak* – NJKP). NJKP is calculated from 20 per cent of the NJOP. However, under MoF Decree No 201/KMK.04/2000, a certain percentage is applied for a certain taxable object (eg, NJKP for plantations, mining and forests is 40 per cent).

8.2 Tax disputes and tax issues

Tax disputes arise between a taxpayer and authorised authority upon a decision made by the respective tax authority.[2] There are four stages that could be pursued by the taxpayer concerning tax disputes: (1) tax objection; (2) tax appeal; (3) tax lawsuits; and (4) judicial review by the Supreme Court.[3]

Under Indonesian law, a taxpayer may file a tax objection with the Directorate General of Tax (Direktorat Jenderal Pajak – DJP) against any tax assessment through the tax office. In the case that such an objection is approved or rejected in part by the DJP, the taxpayer will be subject to an administrative sanction in the form of a penalty amounting to 50 per cent of the tax assessment unpaid at the time the objection was submitted, except if the taxpayer continues the process by filing a tax appeal.

In the appeal process the taxpayer may appeal to the tax court within three months from the date the DJP decision is received by the taxpayer. In this case the taxpayer is required to pay a minimum of 50 per cent of the tax payable before submitting the letter of appeal. If the appeal is approved or rejected in part by the tax court, the taxpayer must pay the unpaid tax in the tax assessment, including a 100 per cent penalty of the tax assessment unpaid at the time the appeal was submitted. The taxpayer may submit a lawsuit against the authority over a dispute concerning, among others, tax collection and/or decision. Tax lawsuits must be lodged within 14 days after the tax collection or within 30 days after the tax decision is released.

The taxpayer may also challenge the tax court decision in an appeal by filing a request to the Supreme Court for judicial review. The request for judicial review can only be filed once. However, judicial review will not hinder the implementation of the tax court decision. The request for judicial review must be filed within three months after the deceit is known after the verdict or there is new written evidence, or some other prevailing reason, such as the court verdict does not correspond to the matter being claimed or if part of the claim has been decided without any consideration of the reason, or where the verdict issued is not in accordance with the prevailing laws. In this case, the Supreme Court shall investigate and decide the case within six months after the request for review is submitted.

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2 Directorate General of Tax, Tax Disputes Settlement (Penyelesaian Sengketa Pajak) www.pajak.go.id/id/penyelesaian-sengketa-pajak accessed 12 June 2020.

3 *Ibid.*

8.3 Double tax avoidance agreement

Indonesia has a signed double tax avoidance agreement (the 'Tax Treaty') with around 67 countries. In order to claim relief under the Tax Treaty, a foreign taxpayer must complete and submit specific documents issued by the DJP. The documents are divided into two forms: DGT-1 and DGT-2. DGT-2 is applied for a company that is a banking institution or earns income from bonds or stock listed on the Indonesia Stock Exchange. Form DGT-1 is applied for other types of company excluded from DGT-2. These documents contain a certificate of domicile, which must be endorsed by the tax authority in the partner country.

Generally, the Tax Treaty will regulate tax on income imposed on behalf of each of the two states, or of their political subdivision or local authorities, and shall apply for any identical or similar taxes. For the purpose of the Tax Treaty, the resident of the contracting states will be defined according to the law of the respective state.

8.4 Tax issues

In Indonesia there are two common issues concerning tax: tax pricing and tax avoidance or evasion. Tax pricing is where the related party conducts a transaction with a price below the market price. Meanwhile, tax avoidance is where a taxpayer avoids paying tax or pays tax below the means required by the prevailing regulation.

8.4.1 Tax pricing

Regarding tax pricing, the Indonesian government has issued, through the DJP, a Guidelines and Mutual Agreement Procedure, which regulates the updated transfer pricing documentation for transfer pricing to provide greater certainty to a business subject to transfer pricing rules. Under Indonesian tax law, the DJP is authorised to adjust a taxpayer's income or costs, where the transaction between related parties is not in accordance with fair and common business practices.

Related parties are deemed to have a special relationship under the following circumstances:

- a taxpayer directly or indirectly holds 25 per cent or more of the capital of another taxpayer, or a company holds 25 per cent or more of the capital of the two taxpayers, in which case these two taxpayers are also considered to be related parties; or
- there is control through management or the use of technology, although ownership relations are not present; or
- there is a family relationship, biological or by marriage, in vertical and/or horizontal lineage of the first degree.

Further, the MoF has issued Regulation No 213/PMK.03/2016 regarding the implementation of the three-tiered documentation requirement. Under the MoF regulation, the taxpayer is required to submit a summary of the master file and local file as an attachment to the corporate return. The summary requires the taxpayer to declare that the master file and local file contain the minimum content as per the requirement and to provide the date on which the master file and local file became available as an addition to the special attachment form of the related party transaction in the annual income tax return. There is no specific deadline for the submission of the transfer pricing documentation, but such a document must be presented when requested by the tax office.

8.4.2 Tax avoidance and tax evasion

Tax avoidance is used to describe the legal arrangement of a taxpayer's business so as to reduce its tax liability. This issue circles around the existence of deficiencies or loopholes in the prevailing laws. Therefore, to minimise such an act, the Indonesian government has applied several anti-tax avoidance measures, such as: (1) Anti-Thin Capitalization regulation; (2) Controlled Foreign Corporation Rules; (3) Transfer Pricing Rule, as mentioned above; (4) Anti-Treaty Shopping; and (5) fair rules principles.

Tax evasion is the illegal act of minimising the amount of tax payment (eg, non-reporting of income or a fictive entity). The Indonesian government's approach regarding tax evasion varies in accordance with how big or small the respective case is. A small case will usually be charged with an administrative sanction; for a big case, the approach will range from an administrative sanction to criminal sanction. The procedure for any criminal charged upon taxation is regulated under MoF Regulation No 18/PMK.03/2013, which is also subject to KUP regulation.

Chapter 9: Intellectual property rights laws

This chapter considers, at a high level, intellectual property rights (IPR) laws in Indonesia.

9.1 Regulatory framework

The intellectual property rights regime in Indonesia is regulated under several regulations, which are adjusted in accordance with the Trade Related Aspects of Intellectual Property Rights (TRIPs), as follows:

- Law No 28 of 2014 concerning Copyright;
- Law No 13 of 2016 concerning Patent;
- Law No 20 of 2016 concerning Trademarks and Geographical Indications;
- Law No 31 of 2000 concerning Industrial Design;
- Law No 32 of 2000 concerning Integrated Circuit Layout Design;
- Law No 30 of 2000 concerning Trade Secrets; and
- Law No 29 of 2000 concerning Protection of Varieties of Plants.

Generally, intellectual property rights regulation is administered by the Directorate General of Intellectual Property Rights of the Ministry of Laws and Human Rights (DGIP), excluding Plant and Variety Protection Rights, which are regulated under the Ministry of Agriculture.

9.1.1 Copyright

Under Indonesian regulations, copyright is an exclusive right of the creator automatically given under declarative principle upon realisation of a creation.[4] Copyright is an exclusive right that consists of moral rights and economic rights. Moral rights are attached to the author and cannot be transferred, while economics rights are transferable.[5] Further, the regulations also extend their protection to copyright-related rights, which relate to copyright as an exclusive right for the performer, phonogram producer or broadcasting company to produce, reproduce or broadcast its works. Although copyright protection is automatic, the copyright creator also has an option to record its right with the DGIP.

Generally, copyright protection lasts for a lifetime and continues for 70 years after the author is deceased. In this case, the holder of the copyright is a legal entity; therefore, copyright protection lasts for 50 years from publication.[6] In addition, copyright protection lasts for 50 years for the performer and phonogram producer, while it lasts for 20 years for the broadcasting company from the first time it is broadcast.[7]

9.1.2 Patent

A patent is defined as the exclusive rights granted by the state to inventors on the basis of their technological invention.[8] There are two types of patent under Indonesian law: patent and simple patent.

A patent is defined as an invention that fulfils the patent requirements, as follows:

- novelty/new;
- inventive step; and
- industrial applicability.

On the other hand, in the case of a simple patent, it is only required that the invention is novel, has industry applicability and is an improvement on an existing product/process. A simple patent does not need to have an inventive step.

Under Indonesian law patent protection lasts for 20 years and a simple patent lasts for ten years from the filing date.

Currently, Indonesian law has an integrated electronic system for intellectual property rights applications. A patent must be recorded at an intellectual property office, such as the DGIP, for protection. If there is no record of registration of the respective patent, there will be no effect on the third party for enforcement.

Patent law also prescribes rules in relation to an invention that cannot be protected under a patent, such as::

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4 Directorate General of Intellectual Property Rights, Ministry of Laws and Human Rights, definition of copyright www.dgip.go.id/pengenalan-hak-cipta accessed 5 April 2020.

5 Indonesian Law, Law No 28 of 2014 concerning Copyright, s 2.

6 *Ibid*, S IX, Art 60.

7 *Ibid*, Art 3.

8 Indonesian Law, Law No 13 of 2016 concerning Patent.

- a process or product for which its publication and use or implementation is contrary to a regulation, religious value, public order or morality;
- a diagnostic method, treatment and/or surgery applied to humans and/or animals;
- scientific theories or methods and mathematical formula; and
- living things, except micro-organisms or biological processes that are essential for producing plants or animals, non-biological processes or microbiological processes.

A patent holder may grant a licence agreement to another party. The patent must be implemented in Indonesia within 36 months of the patent rights protection being granted to support technology transfer, the absorption of the investment and/or job opportunities. Failure to conduct such support will lead to a compulsory licence and invalidation of the patent registration. Further, patent holders also have the ability to sue anyone who makes, uses, rents, delivers or infringes their patent without their consent under criminal charge.

9.1.3 Trademarks and geographical indications

A trademark is defined as a distinguishable and unique sign used in industry for the trade of goods and/or services in order to indicate the origin of the goods and/or services. A trademark is an exclusive right granted by the state to the registered trademark holder for a certain period to use its own trademark or permit another party to use such a right.[9]

Under Indonesian law a trademark should be registered in order to enjoy protection. In the case of registration, the Indonesian jurisdiction upholds the principle of first to file; consequently, in the case of a dispute, the party who registered the trademark first will prevail. It is therefore vital for trademark owners proactively to register their trademarks.

The Indonesian jurisdiction also recognises the trademark application with a priority right under the Paris Convention for the Protection of Industrial Property.[10] Further, as a member of the Paris Convention, Indonesia is obligated to provide protection for well-known trademarks. Additionally, Indonesian trademark law also extends its application to cover international trademark applications under the Protocol Relating to the Madrid Agreement concerning International Registration of Marks.

Trademark protection in Indonesia lasts for ten years from the filing date and may be extended for a further ten years.[11] Trademark registration in Indonesia should be filed with the DGIP.

In the case of rights enforcement, the holder of a registered trademark can enforce its rights through the Commercial Court against any party who is using the registered trademark without a permit or through the criminal court for criminal charges against anyone for infringement.

Similar to trademark rights, geographical indications in Indonesia are also protected after their registration with the Ministry of Laws and Human Rights.[12] Without any registration, protection for geographical indication will be fragile, even though the product has been circulated among the public.

9 Indonesian Law, Law No 20 of 2016 concerning Trademark and Geography Indication, s 1, Art 1.
10 *Ibid*, Art 9.
11 *Ibid*, Art 35.
12 *Ibid*, Art 53.

The application of geographical indication can be filed by the institution that represents society in a particular geographical region that produces products/goods, as well as by the regional government.[13] Further, geographical indications can be registered based on an international agreement. Protection for geographical indications will be given as long as it maintains the goods' reputation, quality and characteristics.[14] Under law the holder of a geographical indication right must prohibit anyone from exploiting the right without the consent of the rights holder.

9.1.4 Industrial design

Under Indonesian law industrial design rights are given to new industrial designs without any prior similar publication. Prior similar publication means before the filing date or the priority date for the application for priority rights for the design, or the design has been used inside or outside Indonesian territory.[15] Protection of industrial designs will not be given for any industrial design that contravenes the prevailing regulation, public policy, religion or ethics.

Industrial design rights protection is given for a ten-year period from the filing date recorded in the Design Industry Log Book and published in the Design Industry Official Publication.[16] An industrial design application originating from any Paris Convention member may claim priority rights within six months from the filing date.

Further, based on the prevailing law, the holder of industrial design rights has the exclusive right to use the industrial design and prohibit anyone from making, using, selling, importing, exporting and/or circulating the design without consent, except for certain exceptions regulated under law.

9.1.5 Trade secrets

Under Law No 30 of 2007 concerning Trade Secrets, a trade secret is defined as classified information unknown to the public in the technology and/or business field that has economic value for the business owner and is protected by the owner of the trade secret.

Protection for a trade secret right under law covers the production method, processing method, selling method or other information in the technology and/or business field that has economic value.

Further, the owner of a trade secret has the right to use the trade secret or transfer the right to another party by licensing it. Any use of a trade secret without consent is subject to criminal charges.

9.1.6 Integrated circuit layout design

Layout design refers to a three-dimensional layout design formed by various elements, with at least one active element, of which parts of or all the interconnections are an integrated circuit, and such a three-dimensional layout is meant for preparation for creating an integrated circuit. Further, under prevailing law an integrated circuit is defined as a finished or semi-finished product that contains

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13 *Ibid.*

14 Ibid, Art 61.

15 Indonesian Law, Law No 31 of 2000 concerning Industrial Design.

16 *Ibid*, Art 5.

various elements, with at least one active element, which are partly or entirely interconnected and integrated to form a semiconductor for producing electronic functions.

The integrated circuit layout design right is an exclusive right granted by the government to designers to exploit their creation. Protection for an integrated circuit layout design will be given to the original design created by the designer for ten years.[17]

The holder of an integrated circuit layout design right has a right to prohibit anyone, without consent, from creating, using, importing, exporting and/or circulating the respective integrated circuit layout design, except for research and educational purposes.[18]

9.1.7 Protection of plant varieties

Protection of plant varieties is a special protection given by the government through the Office for the Protection of Varieties of Plants for any kind of plants and varieties produced by plant breeders.[19] The protection of plant varieties is given for 20 years for seasonal types and 25 years for perennial types.

Indonesian law recognises the transfer of title in regard to the protection of plant varieties. However, such an assignment shall be recorded at the Office for the Protection of Varieties of Plants.[20] Indonesian law also regulates compulsory licensing for every person after 36 months from the date that rights are granted, to any right holders who do not implement their rights in Indonesia or implement their rights but harm public interest. Compulsory licensing is granted by a court hearing process.[21]

9.2 Current developments in Indonesian intellectual property rights law

The Indonesian government has started implementing an online integrated system for intellectual property rights registration to encourage e-filing. The government has also introduced an integrated intellectual property rights database, which escalates the process for checking the status of intellectual property rights registration and information access.[22]

Further, to accommodate national integrated services for every region concerning intellectual property rights, the integrated system also provides regional office information. Additionally, the government also aims to enhance Indonesian intellectual property rights protection by providing an online reporting system for any violation through the DGIP website.

In addition, to improve the current intellectual property rights protection law regime, the government plans to amend current intellectual property rights law to be more in line with technology trends and compliant with the international legal regime on intellectual property rights protection.

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17 Indonesian Law, Law No 32 of 2000 concerning Integrated Circuit Layout Design, Art1.

18 *Ibid*, Art 8.

19 Indonesian Law, Law No 29 of 2000, Art 1.

20 *Ibid*, Art 40 (3).

21 *Ibid*, Art 45.

22 Directorate General of Intellectual Property website http://en.dgip.go.id accessed 8 June 2020.

Chapter 10: Financing

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This chapter focuses on banking business in general and debt financing through bank and non-bank lending.

10.1 Banking licensing

In order to establish a bank in Indonesia and provide banking services, a party is required to obtain in-principle approval and an operating licence as a commercial or rural credit bank from the OJK. A commercial bank may engage in other activity, such as handling foreign currency, or the interim placement of capital in banks or other companies in the field of finance. The latter could include leasing, venture capital, securities companies, insurance and a central securities depository under the provisions of BI, which is the central bank, to the extent it has obtained relevant approval from OJK.

In addition to OJK, BI regulates the macroeconomic system and governs monetary policy and the payments system. These two institutions are the main regulators for the banking and financing industry in Indonesia.

The steps and procedures for obtaining the necessary banking licences are outlined below:

10.1.2 In-principle approval

In-principle approval is a preparatory licence for a bank establishment. An application for in-principle approval must be submitted by at least one of the prospective owners, along with the required supporting documents, including details of the ownership of the bank, candidates for membership of the board of commissioners and board of directors, structure of the organisation and personnel, business plan for the first three years, corporate plan, details on the operation of the bank (risk management, internal control system, good corporate governance and work system) and so on.

10.2.2 Operating licence

A business licence is granted upon completion of the preparation phase and incorporation of the legal entity. An application for a business licence must be submitted to OJK by a party that has already obtained in-principle approval together with the supporting documentation required, such as corporate documents, data on ownership, evidence of payment of paid-up capital or operational readiness and so on.

Capital injected by the shareholders cannot be a loan or financing facility in any form from a bank or other party in Indonesia, or for/from money laundering. The shareholders are required to provide a written statement to confirm the foregoing.

The members of the board of commissioners and board of directors are also required to provide a written statement confirming compliance with certain provisions stipulated in the BI regulation on the implementation of good corporate governance for banks. These include constraints on holding concurrent positions in other banks, holding stocks or shares in other companies and so on

A party that wishes to establish a bank must make a presentation to OJK on the entirety of the plan.

By regulation, the approval or rejection of in-principle approval, as well as the business licence, must be given within 60 working days of the application documents being received. During that 60-day timeline, OJK must carry out a fit and proper test for prospective controlling shareholders and candidates for membership of the board of commissioners and board of directors.

The bank must commence its operational activity within 60 working days of the business licence being obtained and must report to OJK within ten working days of the commencement of its activity.

10.2 Foreign investment restriction

Pursuant to Regulation OJK No 56/POJK.03/2016 on Share Ownership in Commercial Banks (‘Reg 56/2016’), the maximum foreign shareholding in a bank is determined by the following criteria:

1. shareholder category:
    - 40 per cent of the bank’s capital, for a bank financial institution and non-bank financial institution;
    - 30 per cent for a non-financial institution; and
    - 20 per cent and 25 per cent (Sharia); for individual shareholders;
2. relationship between shareholders:
    i. any shareholder having the following relationship will be regarded as one party:
        - ownership relation;
        - family relationship up to second degree; and/or
        - any cooperation or action to achieve the same purpose in controlling the bank (acting in concert) with or without written agreement such that such an action or cooperation creates an option right to hold the shares;

    ii. for a foreign controlling shareholder, Reg 56/2016 stipulates the following requirements:
        - commitment to support economic development in Indonesia;
        - obtaining a recommendation from the relevant financial supervisory authority;
        - a minimum rating of:
            – one rung above the lowest rating of investment for a bank financial institution;
            – two rungs above the lowest rating of investment for a non-bank financial institution; and
            – three rungs above the lowest rating of investment for a non-financial institution;

iii. shareholders (including foreign shareholders) may have a shareholding of more than the above limitation if they purchase the shares of:

- (a) a bank in the handling or salvage of the Indonesia Depository Insurance Corporation; and (b) a bank with special supervision, in which within 20 years of the purchase the shareholders will adjust the shareholding threshold pursuant to Reg 56/2016;
- a bank with intensive supervision, in which within 15 years of the purchase the shareholders will adjust the shareholding threshold pursuant to Reg 56/2016;
- a bank that is the result of merger or amalgamation from the original bank with a good governance level at rating 1 or 2 experiences the following:
  - decrease of Bank Soundness Level to rating 3, 4 or 5 within three consecutive years; or
  - sale of shares at the initiative of the shareholders, the relevant controlling shareholders shall adjust their threshold pursuant to Reg 56/2016 within ten years of the merger or amalgamation;
- a bank the result of a merger or amalgamation from the original bank with a good governance level at rating 3, 4 or 5, whose shareholders must adjust their shareholding threshold pursuant to Reg 56/2016 within 20 years of the merger or amalgamation.

Notwithstanding the above, a shareholder may hold shares at more than the maximum limitation as provided in Reg 56/2016 subject to OJK discretion.[23]

10.3 Liquidity and capital adequacy

Indonesia is a member of the Basel Committee on Banking Supervision, and is therefore committed to implementing the Committee's standards for the national banking industry, including minimum capital requirements, a supervisory review process, market discipline (regulations on credit risk, market risk and Minimum Capital Provision Requirement (Kewajiban Penyediaan Modal Minimum)).

10.3.1 Liquidity requirements under Indonesian banking regulations

A bank in Indonesia must maintain minimum capital funds in rupiah (mandatory minimum deposit (*giro wajib minimum* – GWM)), which includes:

- primary GWM: minimum deposit maintained by the bank in a deposit account of BI, at approximately 6.5 per cent of the total of third-party funds; and
- secondary GWM: minimum reserves in the form of a Certificate of BI, and/or other state commercial paper, at approximately four per cent of total third-party funds.

23 Art 19 of Reg 56/2016.

10.3.2 Capital adequacy

Indonesia has set out obligations on minimum capital requirements for the risk profile grades of different banks, calculated on the basis of the banks' risk-weighted assets. The obligations are:

- eight per cent of a bank's risk-weighted assets for banks with grade 1 risk profile;
- nine up to ten per cent of a bank's risk-weighted assets for banks with grade 2;
- ten to 11 per cent of a bank's risk-weighted assets for banks with grade 3; and
- 11 to 14 per cent of a bank's risk-weighted assets for banks with grade 4 or 5.

Indonesian commercial banks must meet the minimum threshold for tier-1 and tier-2 capital, where common equity tier-1 (paid-up capital and disclosed reserves) is 4.5 per cent of a bank's risk-weighted assets and tier-1 capital is six per cent of a bank's risk-weighted assets. Tier-2 capital is a maximum of 100 per cent of tier-1 capital, either individually or consolidated with the banks' subsidiaries.

Further, banks must set aside additional capital as a buffer against varying economic and financial risks:

- a capital conservation buffer of 2.5 per cent of the banks' risk-weighted assets, which applies to commercial banks classified as 'BUKU 3' and 'BUKU 4'. BUKU 3 is applied to banks with core capital of IDR 5tn to IDR 30tn, while BUKU 4 is for banks with core capital of more than IDR 30tn;
- a countercyclical buffer of zero per cent to 2.5 per cent of the banks' risk-weighted assets (applies to all banks); or
- capital surcharge for systemic banks of one per cent to 2.5 per cent of the banks' risk-weighted assets, which applies to systemic banks. Systemic banks are defined as those that may have a systematic financial impact on various aspects, including the amount of owned assets, capital levels and the obligations that they hold, a bank's network or relationships with other sectors, and the complexity of the bank's transactions or services. OJK has used the term Domestic Systemically Important Bank, but has replaced it with 'systemic bank' in the current regulation.

10.4 Bank and non-bank financing

10.4.1 Bank financing

Banks must have a credit or financing policy approved by their BOC to provide financing to third parties. The credit or financing policy must contain a complete and detailed procedure for providing financing for third parties, including the implementation of prudential principles and risk management, approval procedure, documentation required, supervision of financing and settlement of non-performing or bad financing. Banks must also comply with the maximum legal lending limit (*batas maksimum pemberian kredit*).

10.4.2 Non-bank financing

A non-bank institution must have an annual business plan that contains a financing plan along with a policy and procedure for providing financing to third parties. There must be a specific working unit within the non-bank institution responsible for administering and implementing the financing plan, policy and procedure. This working unit must consist of people who have knowledge and experience in the financing sector.

A non-bank institution, when providing financing to third parties, must also take into consideration financing risk and mitigate such risk by way of, among others, the implementation of a risk transfer mechanism, having the necessary insurance in place and creating securities over the assets of the debtors.

10.4.3 Offshore financing

In addition to financing from Indonesian banks and non-bank institutions, foreign banks and non-bank institutions may directly provide financing to Indonesian companies, except for microfinance institutions. Financing from foreign banks and non-bank institutions will be subject to certain requirements, such as:

- obtaining approval from the Team for Supervision of Offshore Commercial Loans ('Pinjaman Komersial Luar Negeri Team') if the loan is for the construction or development of projects with the following nature/characteristics: (1) financing must be provided on the basis of 'non-recourse', 'limited-recourse', 'advance payments', 'trustee borrowings', 'leasing' and so on; and (2) developed on the basis of build–operate–transfer, build and transfer and so on; and
- loan proceeds must be disbursed to the debtor through a Domestic Foreign Exchange Bank, a bank specifically appointed by BI by way of a letter of appointment to conduct banking activity using foreign currencies, including an Indonesian subsidiary or branch of a foreign bank, but not an overseas branch office of a bank headquartered in Indonesia.

10.4.4 Security and guarantees

Types of security interest

Lenders can take security over all present and future movable, immovable, tangible and intangible assets of the debtor. Security interests in Indonesia are limited to those prescribed by Indonesian law, namely: (1) mortgage, fiduciary security and pledge for *in rem* security interests; and (2) (corporate and personal) guarantees for personal security interests. However, in practice, lenders and debtors also enter into a contractual arrangement that can function as security and create a step-in right for the lenders (eg, a conditional assignment or novation of contractual rights and obligations or powers of attorney) despite the risk that these 'contractual securities' be deemed invalid by Indonesian courts in that they may be considered a circumvention of Indonesian security laws. It is to be noted that only the *in rem* security interest holder has preferential rights. The *in rem* security interest holder is not only entitled to foreclose on the mortgaged, pledged or fiduciary transferred property but may also satisfy its claim out of the proceeds ahead of most other creditors seeking recourse against the mortgaged, pledged or fiduciary transferred property, except for those whose claims are preferred by law (eg, claims for costs of foreclosure, costs incurred to protect the mortgaged, pledged or fiduciary transferred property from loss, and preferential claims of tax authorities).

The bankruptcy of the mortgagor, pledgor and fiduciary transferor does not, in principle, affect the security right of the mortgagee, pledgee and transferee in that the assets in question are not regarded as being part of the bankruptcy estate.

The following chart summarises the assets of an Indonesian debtor typically requested by lenders to be part of the security package and the respective security interest (both *in rem* security and contractual security) that can and would normally be taken over each asset.

Asset	Security taken
Land, plant and other fixtures	Mortgage: provided that the land has a specific land title permitted to be subject to mortgage; otherwise, these assets may be subject to a fiduciary transfer security
Movable and immovable tangible assets	Not able to be subject to mortgage: therefore, secured by a fiduciary security
Receivables and insurance proceeds	Fiduciary security
Intellectual property	Fiduciary security and POA to exercise intellectual property
Bank accounts	Pledge of bank accounts and POA to manage bank accounts
Shares	Pledge of shares, POA to sell shares and POA to vote
Contractual arrangements	Conditional assignment and POA to exercise contractual rights
Licences	POA to manage business

Guarantees in general

Under Indonesian law, the proper and timely performance by a borrower of his/her contractual obligations may be guaranteed by corporate and non-corporate third parties. Under such guarantees, upon default by the borrower, the guarantor is liable to perform the obligations that have been breached, liable to compensate the creditor for losses and damages resulting from such a breach, or both, depending on the wording of the guarantee.

Guarantees may be unlimited or the liability of the guarantor may be limited to an amount specified in the guarantee instrument. If unlimited, the guarantee will cover not only the principal amount of the loan and accrued interest, but also any and all costs and expenses incurred by the creditor in the course of attempting to collect the debt from the borrower and to enforce the guarantee against the guarantor.[24]

Under a guarantee, the guarantor cannot assume any obligations in excess of the obligations of the borrower; if and to the extent that they do, the guarantee is void.[25]

Corporate guarantees

In respect of corporate guarantees, it must be noted that Indonesian law recognises the *ultra vires* principle. This principle is not explicitly provided for in Indonesian company law, but has been developed by legal doctrine.

24 Arts 1825 and 1839, Indonesian Civil Code.

25 Art 1822, Indonesian Civil Code

The existence of this principle could well entail that corporate guarantors may, under certain circumstances, maintain that guarantees issued by them are void or unenforceable on the grounds, for instance, that the objects and purposes of the guarantor's articles of association do not state that the subject company may issue guarantees, and that the subject company concerned has no commercial interest in issuing the guarantee concerned. In accepting corporate guarantees, lenders will be wise to examine whether there are possibilities of such instruments being contested in the future by the guarantors concerned.

Most articles of association of companies provide that the board of directors of the company must obtain the prior approval for the issue of guarantees from either the board of commissioners or the GMS. Lenders should always have to double-check whether such a requirement exists, and if so, whether the guarantor has complied with the requirement under its articles of association. Non-compliance will mean the non-enforceability of the guarantee.

Chapter 11: Privacy laws and data protection

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11.1 Legal framework

Privacy and personal data protection in Indonesia are grounded in Article 28(G) of Indonesia's Constitution, which provides that every person has the right to the protection of themselves, their families, respect, dignity and the possessions under their control. Article 28(G) also provides for security and protection from threat of fear for doing, or not doing, something that constitutes a human right.

To date there is no law or regulation in Indonesia that specifically regulates the protection of privacy. The provisions most relevant to personal data protection are set forth in the following:

- Law No 11 of 2008 regarding Electronic Information and Transactions, as amended by Law No 19 of 2016 (the 'EIT Law');
- Government Regulation No 82 of 2012 regarding the Implementation of Electronic Systems and Transactions, which was issued as procedural guidelines for the EIT Law ('GR 82');
- Government Regulation No 71 of 2019 regarding the Implementation of Electronic Systems and Transactions ('GR 71/2019'), which revoked GR 82; and
- Ministry of Communication and Informatics (MOCI) Regulation No 20 of 2016 regarding Personal Data Protection in Electronic Systems ('MOCI Reg 20/2016').

11.1.1 Consent

Essentially, consent is the core principle of data privacy protection under Indonesian data protection laws and regulations. Any process involving the collection, use or transfer of personal data can be performed only after obtaining the consent of the owner of the personal data.

Article 26(1) of the EIT Law stipulates that, unless otherwise determined by laws and regulations, the use of any information relevant to an individual's personal data through electronic means must be based on that individual's consent. Article 26(2) of the EIT Law provides that if this right is violated, the individual can file a claim for damages caused by the violation of his/her rights.

MOCI Reg 20/2016 further stipulates that displaying, announcing, sending, disseminating and/or providing access to personal data in an electronic system can only be done based on the approval of the owner of the personal data, and such consent must be 'accurate and suitable to the purpose of acquiring and collecting said data'.

11.1.2 Sanctions

As defined in MOCI Reg 20/2016, the consent of the personal data owner must be provided in writing, whether manually or electronically. Non-compliance in this respect could render an electronic system provider (ESP) subject to administrative sanctions provided under MOCI Reg 20/2016.

11.1.3 Personal data owner versus personal data controller

Although the current data protection legal framework in Indonesia is less developed than in other jurisdictions, there have been improvements as the authorities make efforts to keep pace with the country's embrace of the digital economy. For example, mirroring the EU's GDPR, GR 71/2019 recognises and makes a distinction between a personal data owner and personal data controller, although it does not provide a definition for either term.

11.2 Privacy laws and data protection in specific sectors

Aside from the personal data protection provisions discussed above, there are laws in specific sectors that require a certain degree of data protection or refer to privacy rights.

11.2.1 Health sector

Article 57 of Law No 36 of 2009 regarding Health provides that any person is entitled to the confidentiality of his/her personal health information disclosed to healthcare providers, unless disclosure is required.

11.2.2 Financial sector

Article 31(1) of the Financial Services Authority (OJK) Regulation No 1/POJK.07/2013 regarding Financial Consumer Protection expressly prohibits the disclosure of customer data and/or information by financial service providers to third parties without the prior written consent of the customer or if such disclosure is required by a lawful authority.

Article 31(3) further provides that if a financial service provider obtains the personal data and/or information of a person and/or a group of persons from a third party, it must obtain written confirmation from the third party that it obtained the consent of the personal data owner(s) for the disclosure of their personal data to the financial service provider.

11.2.3 Payment system sector

Article 14(1) of BI Regulation No 16/1/PBI/2014 regarding Protection of Payment System Service Consumers ('BI Reg 16/1/2014') requires payment system service providers to protect the confidentiality of consumers' data and/or information by way of having and implementing a consumer data and/or information protection policy. Article 15 of BI Reg 16/1/2014 prohibits payment system service providers from giving the data and/or information of consumers to another party without the prior written consent of the consumers or if such action is required under the prevailing regulations.

11.3 Data transfer

Indonesian laws and regulations do not expressly regulate the handling and transfer of non-personal data. However, any and all actions taken with respect to personal data, including cross-border data transfers, must be based on the consent of the data subject.

11.3.1 Obligations of ESPs

GR 71/2019 provides that ESPs that process personal data, which includes acquisition and collection, processing and analysis, storage, repairs and updates, appearance, announcement, transfer, dissemination or disclosure, and/or deletion or destruction, must fulfil the following obligations:

- personal data collection shall be carried out in a limited and specific manner, be legally valid and just, and be performed with the knowledge and consent of the owner of the personal data;
- personal data processing shall be carried out in accordance with its purpose;
- personal data processing shall be carried out with a guarantee for the rights of the personal data owner;
- personal data processing shall be accurate, complete, not misleading, up to date and accountable, and shall pay due regard to the purpose for processing such personal data;
- during processing personal data shall be protected against loss, misuse, illegal access, disclosure, modification or destruction.
- Personal data processing is carried out with notification to the personal data owner regarding the purpose of the collection and/or processing, and notification of any failure to protect the personal data; and
- Processed personal data shall be destroyed and/or deleted once the retention period based on the provisions of laws and regulations has ended.

11.3.2 Consent

The consent of the data owner for the use and handling of his/her personal data should be as specific as possible, covering, among other things, the transfer of the collected data to a foreign server via the internet and/or the transfer of the collected data to a foreign server after the collected data has been stored in Indonesia, if these actions are intended.

'Consent' is defined in Article 1(4) of MOCI Reg 20/2016 as 'a written manual and/or electronic statement given by a personal data owner after receiving complete disclosure of the obtainment, collection, processing, analysis, storage, display, announcement, transfer and disclosure, as well as the confidentiality or non-confidentiality of, the personal data'.

Article 2(4) of MOCI Reg 20/2016 provides that consent may be given only after the owner of the personal data confirms the veracity, confidentiality or non-confidentiality, and purpose of the personal data. Article 6 of MOCI Reg 20/2016 provides that consent must be given in the Indonesian language.

11.3.3 Use of personal data

Article 14(4) of GR 71/2019 provides that in addition to the consent of the personal data owner, another person's personal data may be used if such use satisfies one of the following requirements:

- processing an individual's personal data in order to satisfy a contractual obligation or to satisfy the request of the personal data owner pursuant to an agreement;
- the satisfaction of a legal obligation of the personal data controller in line with applicable laws and regulations;
- guarding a vital interest of the personal data owner;
- performing a legal obligation of the personal data controller;
- performing an obligation of the personal data controller concerning public service in the public interest; and
- satisfying other lawful interests of the personal data controller and/or personal data owner.

11.3.4 Cross-border data transfer

Specifically with regard to the cross-border transfer of data, Article 22 of MOCI Reg 20/2016 provides that any 'transfer of personal data managed by an Electronic Service Provider at a public or private institution domiciled in Indonesia to outside of Indonesia' must comply with the following requirements:

- coordinated with the MOCI or officials/agencies authorised to handle such cross-border data transfer (the 'Coordination Requirement'); and
- conducted according to the provisions of laws and regulations regarding the cross-border exchange of data.

At the time of writing Indonesia does not have any specific law or regulation on cross-border data exchanges as discussed above.

Article 22(2) of MOCI Reg 20/2016 provides that implementing the Coordination Requirement encompasses the following:

- reporting the planned transfer of personal data to the MOCI, with the report to include at least the names of the receiving state and the receiver, the frequency of such transfer and the reason or purpose of the transfer;
- requesting advocacy, if necessary; and
- reporting the result of the transfer.

There is no regulation to date clarifying the process or form by which parties can satisfy the Coordination Requirement.

11.4 Data onshoring

Some ESPs may be required to store their electronic data onshore in Indonesia. GR 71/2019 classifies ESPs as public scope ESPs or private scope ESPs.

11.4.1 Public scope versus private scope ESPs

Public scope ESPs are state administrative agencies (as defined therein) and institutions appointed by state administrative agencies, while private scope ESPs are individuals, business entities and the public.

GR 71/2019 requires public scope ESPs to manage, process and/or store electronic systems and electronic data in Indonesia, unless the storage technology is not available in Indonesia. Private scope ESPs are allowed to manage, process and/or store electronic systems and electronic data outside Indonesia, on the condition that they provide access to Indonesian authorities for regulatory supervision and law enforcement purposes.

11.4.2 Onshore data and disaster recovery centres

Article 99 of GR 71/2019 stipulates strategic sectors for which the government may, by separate regulation, require onshore data and disaster recovery centres. These strategic sectors include: government administration; energy and mineral resources; transportation; finance; healthcare; information technology and communications; food; defence; and other sectors determined by the President.

11.4.3 Data onshoring for the financial sector

The OJK has enacted various regulations on data onshoring requirements for the financial sector, although the requirements set out are quite general. The exception is regulations applicable to banks, namely OJK Regulation No 28/POJK.04/2016 regarding Integrated Investment Management System and OJK Circular Letter No 21/SEOJK.03/2017 regarding Implementation of Risk

Management in the Utilisation of Information and Technology by Public Banks (the 'OJK Circular Letter 21/2017').

Section 3.2.1 of the Annex to OJK Circular Letter 21/2017 in particular sets out technical requirements applicable to the providers of data centres for public banks. These requirements include control over physical access to the data centre (ie, the installation of biometric devices), control over an uninterruptible power supply, and reliable fire and smoke detectors. Data centre providers are further required by section 9.2.2 (16) of the Annex to OJK Circular Letter 21/2017 to submit an annual audited financial report and audited information technology report to the OJK through its bank customers.

11.5 Looking ahead

Privacy and data protection in Indonesia are loosely regulated at the moment under the EIT Law, GR 71/2019 and MOCI Reg 20/2016. That could soon change. A law on data protection is included in the Prioritized National Legislation Program (Program Legislasi Nasional Prioritas or 'Prolegnas') of the House of Representatives, accessible at www.dpr.go.id/uu/prolegnas. So while it appears that the new law could be here sooner rather than later, an MOCI official was unable to provide a timeframe for when the new data protection law will be enacted.

News reports also indicate that a number of government officials have expressed interest in reviewing and revising the EIT Law and the Telecommunications Law. However, the current Prolegnas does not include any planned amendments to these laws.

Lastly, based on discussions with another MOCI official, there are ongoing talks about enacting a new MOCI regulation in response to GR 71/2019 that will regulate the implementation and enforcement of the ESP registration requirement. However, the official was unable to say when the new regulation might be enacted, and there is no draft of the proposed regulation currently available to the public.

Chapter 12: Competition law

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Law No 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition (the 'Competition Law') prohibits any agreement or conduct that can cause monopolistic practices or unfair business competition, including: (1) anti-competitive horizontal agreements; (2) abuse of dominance; and (3) anti-competitive mergers.

Komisi Pengawasan Persaingan Usaha is an independent agency established in 2000 to enforce the Competition Law.

12.1 Anti-competitive agreements

The following agreements are per se prohibited (ie, no demonstration of anti-competitive effect is required) under the Competition Law:

- a price-fixing arrangement among producers in the same relevant market;
- an arrangement to price discriminate among consumers;
- an arrangement to boycott other enterprises from engaging in the same type of business or access to sell or buy goods and services; and
- an exclusive arrangement restricting resale and supply.

The following are examples of agreements that are prohibited to the extent that they can be demonstrated to result in an anti-competitive effect or unfair business practices:

- an arrangement to jointly control production or the market (oligopoly);
- an arrangement between competitors to fix a price below the market (predatory pricing);
- an arrangement to support the resale price;
- an arrangement that will lead to market partitioning or allocation;
- an arrangement between competitors to influence the price by determining production (cartels);
- an arrangement to establish a joint or large company by keeping and maintaining the continuity of each respective company or its members, with the aim of controlling production (trust);
- an arrangement to jointly control the purchase or acquisition of supplies to control prices (oligopsony);
- an arrangement to control the production of goods included in the production chain (vertical integration); and
- an arrangement with foreign parties setting forth conditions that may cause monopolistic practices or unfair business competition.

12.2 Abuse of dominance

An enterprise with a dominant position is prohibited from:

- imposing trade terms with the intention of preventing and/or hampering the consumers acquisition of goods and/or services competitively, in respect of price or quality;
- restricting the market and technology development;
- hampering other entrepreneurs from potentially becoming a competitor in the relevant market; or

- engaging in price discrimination, predatory pricing, interlocking management in competing companies, or owning or creating a majority shareholding in several companies in the same market.

12.3 Anti-competitive merger

Article 28 of the Competition Law prohibits a business from conducting mergers, dissolving companies or acquiring shares of other enterprises if doing so causes monopolistic practices and/or unfair business competition.

Chapter 13: Dispute resolution

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13.1 Structure of the courts

The 1945 Constitution of the Republic of Indonesia granted independent judicial power in Indonesia to be exercised by the Supreme Court and its branches, which will be elaborated on further below.

13.1.1 Supreme Court

The Supreme Court is the highest tier of the Indonesian court hierarchy among all branches of court, and is responsible for the organisation, administration and financial management of subsidiary courts in its respective jurisdiction, in accordance with the applicable laws and regulations of each individual court. Cases from every branch of jurisdiction, as well as from specialised courts, end up in the Supreme Court as the final stage. It is situated in the capital of the Republic of Indonesia and comprises a maximum of 60 Supreme Court justices.

The Supreme Court has jurisdiction over the following matters:

- cassation petitions;
- disputes between courts over jurisdiction;
- petitions for civil review (*peninjauan kembali*) for a final and binding court decision;
- review of legislation below the level of a law, for example, Government Regulations, Presidential Decrees and Ministerial Regulations (Uji Materiil);
- performing the highest supervision over the conduct of its subsidiary judicial institutions from all branches; and
- internal supervision of the conduct of Supreme Court justices, while external supervision is carried out by the Judicial Commission.

Pursuant to the 1945 Constitution, the Supreme Court has four branches of jurisdiction, and additionally manages and supervises special jurisdiction courts that have been established to handle specific cases.

General Jurisdiction

The General Jurisdiction is a branch of the Supreme Court with jurisdiction to hear both criminal and civil cases and is carried out by the district courts and High Courts.

District courts are the first-instance court for General Jurisdiction and are established in every city and regency, but with jurisdiction limited to the borders of their cities or regencies.

High Courts are courts of appeal and are established in every provincial capital city with their jurisdiction limited to their respective province.

Administrative Jurisdiction

The Administrative Jurisdiction is a branch of the Supreme Court set up to examine, adjudicate and determine state administrative disputes, that is, disputes between private individuals/entities and executive government entities, for which the subject matter can either be a decree issued by a government official or failure to take decisive action by not issuing a decree within a reasonable timeframe as provided for under prevailing laws and regulations.

Religious Affairs Jurisdiction

Religious Affairs Courts (Pengadilan Agama), along with Religious Affairs High Courts (Pengadilan Tinggi Agama), are a branch of the Supreme Court with specific judicial power to hear disputes between Indonesian residents of the Islamic faith and corporations that voluntarily follow Islamic teachings.

Military Jurisdiction

The courts in the Military Jurisdiction serve to examine, adjudicate and decide criminal cases involving military personnel and objections against Military Administrative Decrees (Keputusan Tata Usaha Angkatan Bersenjata). In essence, the courts in the Military Jurisdiction guard and protect Indonesian citizens from the misconduct of military personnel, whether as a result of criminal acts or Military Administrative Decrees that are inconsistent with prevailing laws and regulations.

Special jurisdiction courts

In previous years not all Supreme Court branches have been sufficiently prepared to handle the numerous legal complexities presented to them, due to the fluctuating rate of social and legal developments across the country. In response, special jurisdiction courts were established to handle specific cases, such as the Tax Court, Human Rights Court, and Commercial, Juvenile, Fisheries, Industrial Relations and Anti-Corruption Courts.

13.2 Arbitration

Arbitration is commonly used as a dispute settlement mechanism, especially for commercial disputes in Indonesia.

The main source of arbitration law is found in Law No 30 of 1999 on Arbitration and Alternative Dispute Resolution (the 'Arbitration Law'), promulgated on 12 August 1999. It was not modelled on the UNCITRAL Model Law on International Commercial Arbitration.

Article 1(9) of the Arbitration Law defines an international arbitration award as 'an award handed down by an arbitration institution or individual arbitrator outside the jurisdiction of the Republic of Indonesia, or an award by an arbitration institution or individual arbitrator, which under the provisions of laws of the Republic of Indonesia is deemed an international arbitration award'. It can be inferred that a domestic arbitration award is an award issued within the jurisdiction of Indonesia.

While no express distinction exists between 'domestic' and 'international' arbitration proceedings other than what can be inferred by Article 1(9) above, one can conclude that the Arbitration Law only regulates the procedures for domestic arbitration. The following overview outlines domestic arbitration, excluding the enforcement of international arbitration awards.

13.2.1 Arbitration agreement

In line with the Arbitration Law, an arbitration agreement must be made in writing and signed by the parties, and may be in the form of: (1) an arbitration clause contained in a written agreement made *prior to* the dispute; or (2) an agreement specially entered into by the parties *after* the outset of the dispute (*acta compromis*). Alternatively, the parties may make a separate arbitration agreement in notarial deed form.

In the event of an arbitration agreement made *prior to* the dispute, Article 2 of the Arbitration Law requires that it *clearly states* that all disputes that arise or may arise from a legal relationship between the parties must be settled by means of arbitration. If an arbitration agreement is made *after* the dispute arises, Article 9(3) requires that the agreement include, at least:

- the subject matter of the dispute;
- the full names and addresses of the parties;
- the full name(s) and residential address(es) of the arbitrator or the members of the tribunal;
- the place where the arbitrator or the tribunal will render its/their award;
- the full name of the secretary to the arbitrator or the tribunal;
- the time period within which the arbitration is to be completed;
- a statement from the arbitrator(s) accepting their appointment as such; and
- a statement from the disputing parties that they will bear all costs of the arbitration.

13.2.2 Arbitrability

Article 4(3) of the Arbitration Law implies that an arbitration agreement is deemed to be reached when the agreement to arbitrate is contained in an exchange of letters made by means of communication that provides a record of their content; however, the dispatch of the letters by telex, telegram, facsimile, email or other telecommunications facilities must be accompanied by a note of receipt by the parties.

The general approach to decide whether certain subject matter is arbitrable is provided under Article 5(1), which provides that disputes can be settled by means of arbitration if they are of a commercial nature and involve the rights of the disputed parties. Article 5(2) goes on to provide that disputes that cannot be resolved by arbitration are those for which, according to regulations having the force of law, no amicable settlement is possible. These include criminal matters, bankruptcy, adoption and so on. The elucidation to Article 66 offers more intelligible examples of a commercial nature, such as, among others, activity in commerce, banking, finance, investment and intellectual property rights.

13.2.3 Kompetenz-kompetenz doctrine

Although the Arbitration Law does not provide specific provisions regarding the *kompetenz-kompetenz* doctrine, Articles 3 and 11 of the Arbitration Law, which prohibit Indonesian courts from becoming involved in arbitration, imply that the arbitration tribunal has the authority to determine its own jurisdiction.

13.2.4 Preliminary award or interim relief

Article 32 (1) of the Arbitration Law grants authority to the arbitration tribunal at the request of one party to issue a preliminary award or interim relief, which deals with the manner of running the examination of the dispute, including imposing a security attachment, ordering the deposit of goods with third parties or the sale of perishable goods. However, the Arbitration Law is silent on the procedure to enforce preliminary awards and interim relief.

13.2.5 Disclosure/discovery

The Arbitration Law is silent on the arbitrator’s authority to order disclosure/discovery. Nevertheless, Article 46(3) of the Arbitration Law stipulates that the arbitrator has the authority to request the parties produce additional written explanations, documents or other evidence deemed necessary within a time period determined by the arbitrator.

13.2.6 Recourse against an arbitration award

Within the context of domestic arbitration, the only available recourse against an arbitration award is to annul it or to resist its enforcement.

Articles 70 and 71 of the Arbitration Law provide that parties may file an application for annulment of an arbitration award with the relevant district court on the following grounds:

- letters or documents submitted at the hearings are acknowledged to be false or forged, or are declared to be forgeries after the award has been rendered;
- after the award has been rendered, documents are found that are decisive in nature and were deliberately concealed by the opposing party; or
- the award was rendered as a result of fraud committed by one of the parties to the dispute.

Meanwhile, a party may resist the enforcement of an arbitration award if it establishes that the award concerned violates public policy, as outlined under Article 62(2) of the Arbitration Law.

Under Article 4(2) of Supreme Court Regulation No 1 of 1990, public policy is defined as the fundamental principles of the Indonesian legal system and society. This definition is rather general, but no further elaboration is provided. In practice, the court has and often will exercise wide discretion to interpret this term on a case-by-case basis.

The recognition and enforcement of domestic and international arbitration awards is discussed below.

13.2.7 Recognition and enforcement of domestic and international arbitration awards

Domestic arbitration awards

For a domestic arbitration award, the procedure for enforcement is as follows:

- the tribunal, or its authorised proxy, must deliver and register the original or an authentic copy of the award to the Clerk of the District Court within 30 days of the award's issuance (Article 59(1) of the Arbitration Law);
- failure to register the arbitration award pursuant to the above requirement will render the award unenforceable (Article 59(4) of the Arbitration Law);
- if the losing party fails to perform its obligations under the arbitration award, it will be enforced by order of the Chief Judge of the District Court at the request of the winning party (Article 61 of the Arbitration Law);
- the order of the Chief Judge will be rendered within 30 days of the filing of the request for execution with the Clerk of the District Court (Article 62(1) of the Arbitration Law); however, in practice, the issuance of the order may take longer; and
- the Chief Judge of the District Court must first examine the arbitration award to determine whether it is based on a valid arbitration agreement, if the dispute is arbitrable as a matter of law, and that the award is consistent with good morals and public policy (Article 62 (2) of the Arbitration Law).

The decision of the Chief Judge of the District Court that an award is not enforceable for the above reasons cannot be appealed (Article 62(3) of the Arbitration Law). Further, the Chief Judge of the District Court must not examine the reasoning for the arbitration award (Article 62(4) of the Arbitration Law).

Once endorsed for enforcement by the Chief Judge of the District Court, the award may be executed in the same manner as a final and binding court decision in a civil case.

International arbitration awards

Under Articles 65–66 of the Arbitration Law, the enforcement of an international arbitration award must be applied for at the District Court of Central Jakarta. The award concerned must fulfil the following requirements:

- it is issued by an arbitrator or arbitration tribunal in a country with which Indonesia has a treaty, whether bilateral or multilateral, regarding the recognition and enforcement of an international arbitration award;
- it is in the domain of commercial law according to Indonesian law; and
- it does not violate Indonesian rules of public policy.

The award may be enforced after obtaining an *exequatur* (a writ of enforcement) from the Chairman of the District Court of Central Jakarta. The Arbitration Law requires, as a prerequisite to the issuance of an *exequatur*, the registration of the award directly by the arbitrator(s) or by the disputing parties who have been granted authority to represent the arbitrator(s) by POA. In practice, the latter is commonly chosen as it is more practicable. The POA must be notarised and further legalised by the Indonesian Consulate/Embassy with jurisdiction over the arbitrator or arbitration institution (for institutional arbitration). The following documents must be submitted when registering the award:

- an original or authentic copy of the international arbitration award and a sworn translation in the Indonesian language;
- an original or authentic copy of the arbitration agreement and a sworn translation in the Indonesian language;
- an official statement from the diplomatic representative of the Republic of Indonesia in the country where the international arbitration award was issued, certifying that that country is a party to bilateral and multilateral agreements on the recognition and execution of international arbitration decisions (the New York Convention) with Indonesia;
- a notarised and legalised POA from the arbitrator(s) to the disputing parties to register and enforce the award at the District Court of Central Jakarta; and
- a notarised and legalised substitution POA from the party seeking to enforce the award to its legal representative (in the case where the party is represented by lawyers) to register and enforce the award at the District Court of Central Jakarta.

13.3 Other forms of dispute resolution

In addition to arbitration, Indonesia also recognises other ADR mechanisms, such as consultation, negotiation, mediation, conciliation and expert determination. In fact, parties are given the freedom to set their own dispute mechanism, such as the adoption of a dispute adjudication board, which is quite common in the construction sector.

Compared with arbitration, other forms of dispute resolution are even less regulated. Under the Arbitration Law, there is only Article 6 touches on this area. This single article mentions the possibility of parties settling their dispute out of court. There are three scenarios:

1. The resolution is done by direct meeting for a maximum of 14 days, resulting in a written settlement agreement (*kesepakatan tertulis*).
2. If (1) fails, based on mutual agreement, the dispute can further be settled with assistance from an expert or mediator. If the parties are unable jointly to agree when appointing an expert or mediator, they may seek assistance from a dispute resolution institution to. The period for this process is limited to 30 days. The same as in (1), the end result is a written settlement agreement.
3. If (2) fails, also based on the parties' mutual agreement, the dispute may further be referred to arbitration.

As with an arbitration award, a written settlement is final and binding. It must be registered with the district court within 30 days of its signing date and must be enforced within 30 days following registration.

As a side note, while Indonesia recognises other forms of dispute resolution, to date it still has not ratified the Singapore Convention. Accordingly, the above provisions are only applicable to domestic settlement agreements.