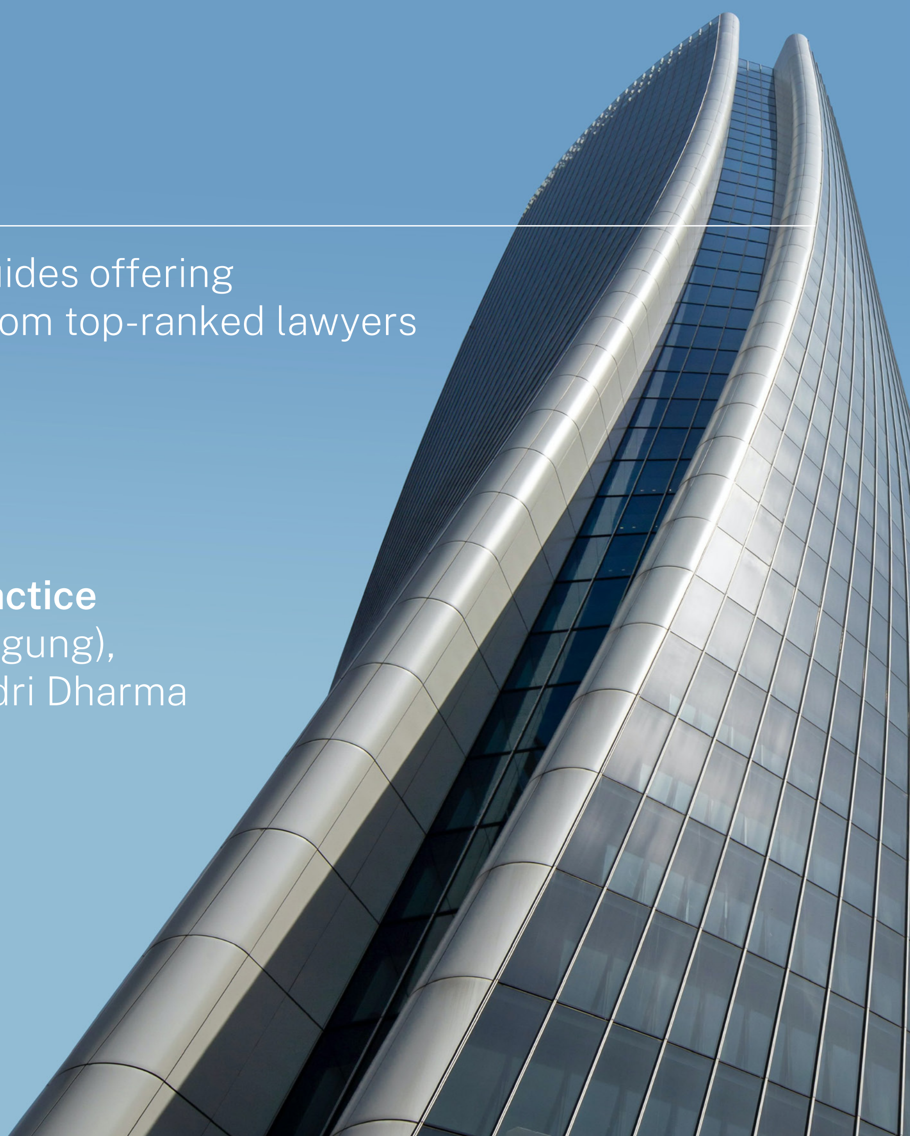
Chambers
AND PARTNERS

CHAMBERS GLOBAL PRACTICE GUIDES

Investing In... 2025

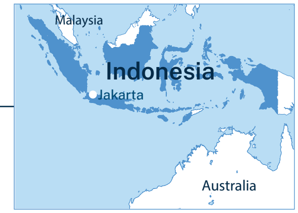
Definitive global law guides offering comparative analysis from top-ranked lawyers



Indonesia: Law and Practice

Agus Ahadi Deradjat (Agung), Gustaaf Reerink and Adri Dharma
ABNR

INDONESIA



Law and Practice

Contributed by:
Agus Ahadi Deradjat (Agung), Gustaaf Reerink and Adri Dharma
ABNR

Contents

ABNR was founded in 1967 and is Indonesia's longest-established law firm. ABNR has played a pivotal role in shaping the development of international commercial law in the country, particularly during its economic reopening to foreign investment in the 1960s. Today, with a team of around 120 legal professionals – including 20 partners and four foreign counsels – ABNR stands as Indonesia's largest independent full-service law firm. ABNR is proud to have female lawyers at the partnership level, reflecting the firm's commitment to diversity and inclusion. ABNR has consistently maintained its position as a top-tier law firm since its establishment. As the only Indonesian member of Lex Mundi since 1991 – the world's leading network of independent law firms with representation in over 100 countries – ABNR provides seamless global services for its clients. Further information about ABNR can be found at www.abnrlaw.com.

Authors

Agus Ahadi Deradjat (Agung) is a partner at ABNR and a former member of the firm's management board. Agung focuses his practice on corporate/mergers and acquisitions (M&A), foreign direct investment (FDI) and technology, and media and telecommunications (TMT). He advises leading domestic and multinational corporations across all leading industries and sectors, but offers particular expertise and experience in life sciences, technology and telecommunications, e-commerce and the automotive industry. He recently worked on a number of major M&A and FDI transactions for high-end multinational clients, as well as significant FDI transactions in the technology, pharma, chemicals and natural resources sectors. Agung is ranked for TMT (Band 1) and corporate and M&A in Chambers' Asia-Pacific guide.

Gustaaf Reerink specialises in corporate, M&A and competition/antitrust, advising clients across a broad range of industries including automotive, aviation, consumer goods and e-commerce, education, financial, pharmaceutical and healthcare, power and renewables, real estate and infrastructure, shipping and maritime, telecom and tourism industries. Gustaaf is a guest lecturer at several Indonesian universities and the Indonesian Ministry of Law. He was admitted to the Amsterdam Bar in 2008 and is a registered foreign lawyer in Indonesia. Gustaaf is the only lawyer in Indonesia to be ranked in the spotlight table as a foreign legal consultant for competition/antitrust in the Chambers Asia Pacific guide.

Adri Dharma joined ABNR in 2007 and was made partner in January 2023. He primarily focuses on corporate and M&A, FDI, pharmaceutical and life sciences, FMCG and TMT. In FDI, Adri has advised international clients, including Fortune 500 multinational companies, across multiple sectors towards establishing a presence in Indonesia. In M&A, Adri has been involved in several notable projects, including the recent acquisition of a prominent construction steel manufacturing company by a consortium of Japanese and Thai investors, and the acquisition of a leading local distribution company by a major EU-based chemical and pharmaceutical distributor. Additionally, he has been involved in a variety of corporate restructurings, including spin-off and asset acquisition/disposal transactions.

ABNR

Graha CIMB Niaga 24th Floor
Jl Jenderal Sudirman Kav 58
Jakarta 12190
Indonesia

Tel: +62 21 250 5125
+62 21 250 5136
Fax: +62 21 250 5001
Email: aderadjat@abnrlaw.com
greerink@abnrlaw.com
Web: www.abnrlaw.com

1. Legal System and Regulatory Framework

1.1 Legal System

The Indonesian legal system adheres to a civil law system that is primarily based on statutory law. This mandates that judges in Indonesian courts adjudicate cases by interpreting and applying the prevailing law and regulations in Indonesia. Unlike common law jurisdictions, where judicial decisions are often guided by precedent, Indonesian judges are not obligated to follow case law. However, in practice, some judges may consider previous rulings in rendering their decisions.

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

- the Company Law (Law No 40 of 2007 on Limited Liability Companies, as amended), which sets out requirements for the lawful establishment and operation of an Indonesian entity;
- the Investment Law (Law No 25 of 2007 on Investment, as amended), which regulates foreign direct investment (FDI) in Indonesia;
- the Capital Markets Law (Law No 8 of 1995 on Capital Markets, as lastly amended by Law No 4 of 2023 on the Development and Strengthening of the Financial Sector);
- the Job Creation Law (Law No 6 of 2023 on the Ratification of Presidential Regulation in lieu of Law No 2 of 2022 on Job Creation), which streamlines various laws across many sectors;
- Government Regulation No 5 of 2021 on Risk-Based Business Licensing, which regulates the types and requirements of business licences; and
- other laws and regulations, depending on the industry.

1.2 Regulatory Framework for FDI

FDI Authority and Licensing

In general, FDI in Indonesia is overseen by the Ministry of Investment and the Downstream Industries/Indonesia Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* (BKPM)). The BKPM stipulates the requirements for FDI, operates an online integrated licensing portal, the Online Single Submission Risk-Based Approach system (the "OSS system"), and monitors investments by business undertakings.

To operate in Indonesia, business undertakings are required to register with the OSS system and apply for a business licence. The OSS system simplifies the licensing process by allowing businesses to apply for and manage their licences online. The OSS system will issue a licence based on the authorisation granted by other governmental ministries/agencies for the sector concerned.

The OSS system applies a risk-based approach to determine the type of business licence that must be obtained by businesses to conduct their business activities. The risk levels are determined based on assessments of various factors, including health, safety, environmental impact and resource utilisation.

Businesses are classified into the following main risk categories.

- Low risk: businesses in this category only need to obtain a business identification number (NIB).
- Medium risk: These businesses require an NIB and a standards certificate. This category is divided into medium-low risk (requiring a self-assessed standards certificate) and medium-high risk (requiring a verified standards certificate).

- High risk: High-risk businesses must obtain an NIB and a business licence, as well as additional permits or approvals.

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

Foreign Investment Limitations

Businesses must observe limitations on foreign ownership where applicable.

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

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

Business sectors open to investment are also divided into:

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

2. Recent Developments and Market Trends

2.1 Recent Developments and Market Trends

Following the results of the general election in February 2024, Indonesia has successfully transitioned to a new administration led by President Prabowo Subianto, who was inaugurated in October 2024. President Prabowo pledged his commitment to continue the legacy of the former President Joko Widodo. Political stability in Indonesia is expected to continue as the new administration is supported by a coalition of parties representing more than 80% of the parliament.

The new administration has set an ambitious target for achieving 8% annual economic growth over the next five years, up from the current target of 5.2% for 2024. Achieving this target will necessitate significant FDI in various sectors. As of September 2024, the BKPM reported that IDR584.6 trillion in investment had been realised, with 53.9% attributable to FDI.

In terms of the business sector, the new administration is focused on achieving food self-sufficiency and ensuring that the entire population receives adequate nutrition. Other sectors, including renewable energy, consumer products, healthcare and mining, also play a crucial role in Indonesia's economy.

The Personal Data Protection Law came into force in October 2024. This law encapsulates the government's efforts to ensure the protection of personal data, especially in the current digital era, and mandates all businesses to protect the personal data they control or process. However, continuous developments and issuance of the relevant implementing regulations by relevant authorities are still needed to ensure effective enforcement of this law.

Regarding international co-operation, the Indonesian government aims to balance its position among major countries. This policy is reflected in Indonesia's goal to become a member of the OECD by 2027. Additionally, Indonesia is a partner state of Brazil, Russia, India, China and South Africa (BRICS).

3. Mergers and Acquisitions

3.1 Transaction Structures

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

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

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

The structures in this section are also common in public companies.

3.2 Regulation of Domestic M&A Transactions

An M&A transaction for a private company must comply with the requirements and procedures of the Indonesian Company Law.

- In a merger or direct acquisition, the board of directors (BOD) of the company would be required to produce a merger/acquisition plan for approval by the board of commissioners (BOC) and a general meeting of shareholders (GMS) of the company. This requirement does not apply if the acquisition only involves direct acquisition of the existing shares of the company.
- The merger/acquisition plan must be announced to the creditors in a newspaper with nationwide circulation, and to employees. This announcement provides an opportunity for creditors of the company to file objections to the merger/acquisition plan. The company must settle all claims before the transaction can proceed. Meanwhile, employees of the company would also have the option to either continue or terminate their employment following the transaction.
- The result of the merger/acquisition transaction must be further announced in a newspaper with nationwide circulation.

Depending on the industry, an M&A transaction may require prior approval from the relevant government authority.

Should the M&A transaction meet a certain assets/sales value threshold, additional reporting requirements shall apply (for further details, see **6. Antitrust/Competition**).

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

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

For a merger, the merger plan must be approved by the BOC and the GMS. However, if the merger might cause a conflict of interest that could potentially result in economic loss to a public company, prior approval for the merger must be obtained from the independent shareholders.

4. Corporate Governance and Disclosure/Reporting

4.1 Corporate Governance Framework

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

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

- the company must have at least two shareholders;
- the minimum issued and paid-up capital is IDR10 billion (approximately USD625,000);
- the investment value must be greater IDR10 billion (approximately USD625,000), excluding the land and building value, per line of business and project location; and
- the company must have a two-tier management system comprising (i) a BOD, which manages the day-to-day operations of the company, and (ii) a BOC, which supervises the management of the company carried out by the BOD.

A foreign investor can only invest in a limited liability company.

4.2 Relationship Between Companies and Minority Investors

Rights of Minority Investors

Under the Company Law, minority investors (shareholders) in an Indonesian company are to be treated equivalently to other investors, enjoying the same rights as vested in the shares they hold unless otherwise stipulated in the articles of association of the company.

The Company Law includes specific provisions to protect the rights of minority investors in an Indonesian company. Pursuant to the Company Law, one or more shareholders collectively representing at least one-tenth of the total issued shares with valid voting rights (or any smaller amount as provided for in the articles of association) are entitled to:

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

cial loss to the company, the shareholders or a third party; and
- submit a request to the GMS to dissolve the company.

The foregoing rights are also applicable to minority shareholders of a public company. Typical minority shareholders' rights for a public company are the rights to participate in an MTO (in the event of an acquisition) and be classified as independent shareholders. Certain transactions, including conflict of interest and affiliated party transactions deemed material (which amount to more than 50% of the public company's equity), must obtain prior approval from the independent shareholders at a shareholders' meeting.

4.3 Disclosure and Reporting Obligations

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

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

Additionally, every company must also declare its ultimate beneficial owner (UBO) to the Ministry of Law. A UBO is defined as an individual who:

- holds more than 25% of the shares in the company as stated in the articles of association;
- has more than 25% of the voting rights in the company;
- receives more than 25% of the annual income or profit earned by the company;
- has the authority to appoint, replace or dismiss members of the BOD and/or BOC;
- has the authority or power to influence or control the company without obtaining authorisation from any party;
- receives benefits from the company; and/or
- is the true owner of the source of funds for the company's shares.

Information on the UBO is accessible to the public through the Ministry of Law's website.

5. Capital Markets

5.1 Capital Markets

The Indonesian capital markets are mainly governed by the Capital Markets Law. Capital market activities in Indonesia are regulated and supervised by the OJK, which oversees capital market activities and participants including the Indonesian Stock Exchange (IDX), Indonesian Central Securities Depository (*Kustodian Sentral Efek Indonesia* (KSEI)), Indonesian Clearing and Guarantee Corporation (*Kliring Penjaminan Efek Indonesi* a (KPEI)), brokers and other participants involved in Indonesian capital markets. The OJK also approves initial public offerings (IPOs) in Indonesia.

Self-governing bodies relating to capital market activities in Indonesia include:

- the IDX, which monitors trading, settlements and listed company compliance with its regulations and receives corporate action notifications from companies and announces them to the market – supervision also includes listing applications by Indonesian companies to be listed on the IDX;

- the KPEI, a clearing and guarantee institution for clearing and stock exchange transaction settlement guarantees; and
- the KSEI, a central depository for equity and corporate bonds in the Indonesian market, set up as a private limited liability company.

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

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

Capital market funding has been recognised by Indonesian companies as a funding alternative to bank financing. As of December 2024, 941 companies had listed their shares on the IDX, and in 2024 a total of 41 companies have become listed.

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

A company that wishes to make an IPO must submit a registration statement to the OJK supported by documentation including:

- a cover letter;
- a prospectus;
- an audited financial statement;
- a letter of comfort from the accountant;
- a financial forecast statement;
- a due diligence report and legal opinion;
- underwriting agreements (if any);
- a corporate structure document that describes the position of the company vertically, starting from the individual shareholders up to the subsidiaries at the highest level, and the position of the company horizontally;
- a statement on the completeness and validity of the public offering documents submitted by (i) the company, (ii) the underwriter and (iii) capital market-support professionals; and
- other information requested and deemed necessary by the OJK, and which can be made available to the public without adversely affecting the interests of the company.

Registration may become effective on the 20th working day from (i) the date the registration statement is fully received by the OJK or (ii) the date on which the OJK receives the latest amendments or additional information submitted by the issuer in response to the OJK's request for amendments and/or additional information; or on an earlier date, if declared effective by the OJK.

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

5.2 Securities Regulation

Securities Exchange

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

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

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

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

FDI

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

5.3 Investment Funds

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

6. Antitrust/Competition

6.1 Applicable Regulator and Process Overview

Merger Control

Merger control in Indonesia is governed primarily by Law No 5/1999 on the Prohibition of Monopolistic Practices and Unhealthy Business Competition, as amended by the Job Creation Law (the Indonesian Competition Law (ICL)), government regulations and Indonesia Competition Commission (*Komisi Pengawas Persaingan Usaha* (KPPU)) regulations and guidelines.

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

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

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

A merger is a juridical act whereby one or more undertaking merges with another undertaking, resulting in assets and liabilities being transferred by operation of law to one undertaking, and with the legal status of the other undertaking ceasing by operation of law.

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

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

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

A transfer of assets (tangible or intangible) is tantamount to the acquisition of shares and, accordingly, should be notified to the KPPU if there is a transfer of their managerial or physical control, or an increase in the ability of the acquirer to control a relevant market.

The following asset transfers are exempt:

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

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

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

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

6.2 Criteria for Review

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

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

If the market concentration test is positive, the KPPU will consider barriers to entry. The KPPU will look at the ease with which new players may enter the market, the strength of new players, the time needed to enter the market, switching costs, the homogeneity of products and brand loyalty.

6.3 Remedies and Commitments

When the KPPU has concerns about a transaction, the parties are able to negotiate structural remedies (ie, divestiture) or behavioural remedies, such as access to intellectual property rights (IPRs) related to essential facilities or the elimination of competition barriers, such as exclusive contracts, consumer switching costs, tie-in or bundling, or supply or purchase barriers.

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

6.4 Enforcement

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

7. Foreign Investment/National Security

7.1 Applicable Regulator and Process Overview

Indonesia does not have a foreign investment/national security review regime applicable to FDI that may scrutinise or potentially block an investment in sectors or locations deemed sensitive, and which might affect national security. Additionally, all investors are treated equally regardless of their country of origin.

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

- the cultivation of narcotic crops and manufacture of schedule I narcotic drugs;
- all forms of gambling and/or casino activities;

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

In 2021, the Indonesian government issued the Investment List, adding the manufacture of hard liquor, wine and malt beverages to the list. In addition to the foregoing, some other business fields are reserved for the government authority (and thus closed for investment), including activities or services carried out in the framework of strategic defence and security that cannot be carried out or in co-operation with a third party.

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

7.2 Criteria for Review

There is no applicable information in this jurisdiction.

7.3 Remedies and Commitments

There is no applicable information in this jurisdiction.

7.4 Enforcement

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

8. Other Review/Approvals

8.1 Other Regimes

Other Regimes Related to FDI

Other regimes that may be relevant to foreign investors in Indonesia include the following.

Zoning Requirements

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

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

Environmental Matters

Business undertakings are required to obtain environmental approval for every business they carry out in Indonesia. The type of environmental approval required depends on the impact of the business on the environment:

- an environmental impact analysis (*Analisis Mengenai Dampak Lingkungan* (AMDAL)) is

required for a business having a significant impact on the environment;
- an Environmental Management Efforts and Environmental Monitoring Efforts (*Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup* (UKL-UPL)) report is required for a business having no significant impact on the environment; and
- a Letter of Undertaking of Environmental Management and Monitoring (*Surat Pernyataan Pengelolaan Lingkungan* (SPPL)) is required for a business that has no significant impact on the environment and does not meet the criteria mandating a UKL-UPL.

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

Asset and Land Acquisition

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

- the right to build (*hak guna bangunan* (HGB)) – the right of the holder to utilise the land to build a new establishment or use anything that has been previously built on the land on an exclusive basis;
- the right to cultivate (*hak guna usaha* (HGU)) – the right to cultivate a plot of state land for agricultural purposes, and to benefit from the proceeds derived from the agricultural activities conducted on the land; and
- the right to use – a subsidiary right upon land that may be granted by the holder of an HGB or HGU land title to another party.

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

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

Sanctions

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

9. Tax

9.1 Taxation of Business Activities

Taxation of Business Activities

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

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

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

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

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

Small companies – ie, corporate taxpayers with annual turnover of no more than IDR50 billion, are entitled to a 50% discount off the standard tax rate, which is imposed proportionally on taxable income when the gross turnover is up to IDR 4.8 billion. Certain enterprises with gross turnover of not more than IDR4.8 billion are subject to a final tax of 0.5% of the turnover.

Value Added Tax

In Indonesia, value added tax (*pajak pertambahan nilai* (PPN)) is levied on most goods and services. The standard PPN rate is currently set at 12%. However, for goods and services that are not classified as luxury items, the government has implemented a reduced rate of 11%.

PPN is imposed at each stage of the production and distribution process on manufacturers, retailers and ultimately consumers. Certain goods and services, such as basic commodities, healthcare, and education, are either exempt from PPN or subject to non-collection.

9.2 Withholding Taxes on Dividends, Interest, Etc

Dividends and other income are not subject to withholding tax by third parties (Article 4(2) of the Income Tax Law), including:

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

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

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

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

9.3 Tax Mitigation Strategies

No response has been provided in this jurisdiction.

9.4 Tax on Sale or Other Dispositions of FDI

Concerning the tax on sale or other dispositions of FDI, see **9.2 Withholding Taxes on Dividends, Interest, Etc.**

9.5 Anti-Evasion Regimes

No response has been provided in this jurisdiction.

10. Employment and Labour

10.1 Employment and Labour Framework

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

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

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

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

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

Essentially, rules related to labour unions are stipulated under Law No 21 of 2000 on Employee/Labour Unions (the "Labour Union Law"). Under the Labour Union Law, a labour union will be recognised if, following its establishment, (i) it provides notification of its establishment in writing to the local office of the Manpower Agency for registration purposes; and (ii) it provides notification of its establishment and registration number to its employer, to which the employer has no right to object.

A recognised labour union is entitled to:

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

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

10.2 Employee Compensation

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

Further, incentives, bonuses or reimbursement must be based on an agreement between the employer and employees, as well as on the employers' policy. Employers are obliged to enrol their employees in the social security programme administered by the Social Security Agency (*Badan Penyelenggara Jaminan Sosial* (BPJS)) for Manpower and the BPJS for Health.

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

The normal working hours are seven hours per day and 40 hours per week, for six working days per week, or eight hours per day and 40 hours per week for five working days per week. Flexible working arrangements are possible subject to agreement between the parties.

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

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

In the event of termination of a permanent employee (including due to an employee reaching the specified pension age), the employer is obliged to pay a severance package, which comprises (i) severance pay, (ii) service appreciation pay and (iii) compensation for entitlements.

The calculation of (i) to (iii) must be performed using the formulas stipulated under Government Regulation No 35 of 2021 on Fixed-Term Employment Agreements, Outsourcing, Work and Rest Hours, and Termination of Employment (GR 35) at a minimum. The amounts will vary depending on the reason for termination, length of service, latest salary, fixed allowance and balance of annual leave. The employer may opt to use its own formula, as regulated in the employment agreement, CR or CLA, provided that it is more beneficial to the employee than that stipulated in GR 35.

In the event of early termination of a fixed-term employee, the employer must compensate them in an amount equivalent to the remaining salary of the employee until expiry of the fixed-term employment agreement. In addition, in the event of expiration of a fixed-term employment agreement for any reason, the employer is also obligated to pay compensation as per GR 35, which will be calculated in proportion to the employee's period of service. The latter compensation is not applicable to foreign employees.

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

10.3 Employment Protection

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

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

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

The Manpower Law and GR 35 are silent in relation to employment termination due to a business sale (other than a spin-off transaction).

Therefore, if the sale is only related to one or part of the businesses managed by the company, the foregoing reasons for termination will not be applicable. In practice, employees who are attached to the business will either be offered (i) a new position in the seller's company, (ii) transfer of employment to the purchaser (new owner of the business) or (iii) mutual termination by the seller.

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

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

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

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

11. Intellectual Property and Data Protection

11.1 Intellectual Property Considerations for Approval of FDI

Intellectual property in Indonesia is divided into seven types, each of which is regulated by its respective law:

- trade marks, stipulated in Law No 20 of 2016 on Marks and Geographical Indication (as amended);
- geographical indication, stipulated in Law No 20 of 2016 on Marks and Geographical Indication (as amended);
- patents, stipulated in Law No 65 Year 2024 on Patents;
- copyright, stipulated in Law No 28 of 2014 on Copyright (as amended);
- industrial design, stipulated in Law No 31 of 2000 on Industrial Design;
- trade secrets, stipulated in Law No 30 of 2000 on Trade Secrets; and
- layout designs of integrated circuits, stipulated in Law No 32 of 2000 on Layout Designs of Integrated Circuits.

All of the foregoing are classified as IPRs, and the associated legislation is referred to as the Intellectual Property Law (the "IPR Law").

The IPR Law is an important aspect of FDI, as it protects the intellectual property of any party in

Indonesia. To ensure protection of an intellectual property asset, a foreign investor must register or record the assets with the Directorate General of Intellectual Property of the Ministry of Law (DGIP), except for copyright (for which protection is not based on recordation but rather on declaration).

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

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

11.2 Intellectual Property Protections

As long as the owners have duly registered their intellectual property with the DGIP (except for copyright), the intellectual property will be protected by the IPR Law and the authority provided by evidence of IPR registration or recordation with the DGIP.

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

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

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

The protection of AI-generated works remains unclear due to the absence of explicit provisions within the IPR Law. This ambiguity arises from the lack of clarity regarding the identity of AI creators and the ownership of AI-generated works, as the AI programmes themselves create new content, generate information and derive ideas based on the recognition of patterns in data. This complicates the establishment of legal protection for such works.

11.3 Data Protection and Privacy Considerations

Personal data protection in Indonesia must follow the provisions in Law No 27 of 2022 on Personal Data Protection (the “PDP Law”) and, for personal data processing in electronic systems, Law No 11 of 2008 on Electronic Information and Transactions, as amended by Law No 19 of 2016 (the “EIT Law”), as well as its implementing regulations including Government Regulation No 71 of 2019 on the Provision of Electronic Systems and Transactions (GR 71/2019). The PDP Law is effective as of 17 October 2024.

Pursuant to the PDP Law and GR 71/2019, personal data is defined as data on a person who is identified or identifiable, either separately or in combination with other information – either directly or indirectly – through an electronic system or via non-electronic means. Given this definition, the term “personal data” has a broad interpretation and includes any data attributable to an individual capable of being used to identify them.

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

- consent of the data subject;
- contractual necessity;
- for compliance with the data controller's legal obligations;
- to protect the vital interests of the data subject;
- if it is in the public interest – ie, for the provision of public services or for the exercise of lawful authority; and
- legitimate interest.

The processing of personal data in Indonesia must have at least one of these lawful bases.

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

- within the jurisdiction of Indonesia; and/or
- outside the jurisdiction of Indonesia but subject to legal consequences (i) in Indonesia or (ii) in connection with the personal data of an Indonesian citizen.

The EIT Law applies to any Indonesian citizens, foreign nationals or legal entities that carry out legal actions, as stipulated in the EIT Law, both within and outside Indonesia, which have legal consequences within or outside Indonesia and harms/affects the public interest in Indonesia.

CHAMBERS GLOBAL PRACTICE GUIDES