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Indonesia Investing In

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in Indonesia.

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Indonesia: Investing In

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

As one of the emerging market economies in the world and one of the largest in Southeast Asia, with a population of almost 280 million, a growing middle class and abundant natural resources, Indonesia is an attractive investment destination for foreign investors. Nevertheless, the Indonesian government is aware of the challenges foreign investors may have in investing in Indonesia. As part of its efforts to improve the investment climate in Indonesia, on 5 October 2020, the Indonesian government enacted sweeping new legislation in 2020 to encourage foreign investment. Known as the Omnibus Law on Job Creation ("**Job Creation Law**"), it has been hailed as the most significant legal reform in Indonesia since the adoption of the Civil Code in 1847.

Some key investment issues addressed by the Omnibus Law are:

- Transition from a "negative" investment list regime to a "positive" investment list;
- Development for micro, small and medium business investment;
- Provision of investment facilities as noted in the investment list (that will be further elaborated below); and
- Amendments to the licensing procedure (by launching and maintaining the Risk-Based Approach Online Single Submission System ("**RBA OSS System**").

To provide an overview of Indonesia's investment landscape, in 2019, Indonesia attracted IDR 423.1 trillion (approximately \$26.68 billion) in foreign direct investment ("**FDI**").¹ This figure slightly dipped to IDR 412.8 trillion (approximately \$26.0 billion) in 2020.² However, in 2021, it rose to IDR 454 trillion (approximately \$28.55 billion), and in the latest data available, it surged to IDR 654.5 trillion (approximately \$34.99 billion) in 2022.

In July 2023, Indonesia's Investment Coordinating Board ("**BKPM**") revealed that investments during the second quarter of 2023 totaled IDR 349.8 trillion (approximately \$22.09 billion).³ For the first half of 2023, total investment

reached IDR 678.7 trillion (approximately \$42.8 billion), indicating a 16.1% rise from the previous year's corresponding period. In the second quarter of 2023, foreign investors accounted for 53.3% of the total investment, contributing IDR 186.3 trillion (approximately \$11.77 billion).⁴ Cumulatively, investment from January to September 2023 reached IDR 1,053.1 trillion (\$66.4 billion), marking an 18.0% increase compared to the same period in 2022.⁵ This represents the highest amount of FDI in Indonesia since 2019.

In greater detail, the following table shows FDI projects/deals by business sector that made it into the top 23 for the third quarter of 2023.⁶

No.	Business Sector/Fields	Investment (US\$ Million)	Projects
1.	Basic Metal Industry, Metal Products, Non-Machinery, and Equipment	3,253.3	924
2.	Chemical and Pharmaceutical Industry	1,335.0	1,229
3.	Mining	1,326.8	641
4.	Paper and Printing Industry	1,159.6	450
5.	Transportation, Warehouse and Telecommunications	1,085.1	2,093
6.	Electricity, Gas and Water	819.5	613
7.	Food Industry	638.3	2,129
8.	Housing, Industrial and Office Areas	595.5	4,211
9.	Food Crops, Plantations and Livestock	566.8	967
10.	Industry of Machinery, Electronics, Medical Instruments, Electrical, Precision, Optical and Watch Equipment	429.9	991
11.	Industry of Motor Vehicle and Other Transportation Equipment	425.1	852
12.	Other Services	380.6	9,813
13.	Trade and Repairs	306.6	14,344
14.	Leather Goods and Footwear Industry	205.7	395
15.	Non-Metallic Mineral Industry	161.1	241
16.	Hotels and Restaurants	120.9	5,021
17.	Construction	120.8	1,180
18.	Other Industries	93.9	922
19.	Rubber and Plastic Industries	87.7	680
20.	Textile Industry	81.6	824
21.	Timber Industry	45.8	407
22.	Forestry	15.6	97
23.	Fisheries	4.6	220

Nevertheless, we have no further information on the total

or the detail of average deals.

Footnotes:

¹ Ministry of Home Affairs of Indonesia's journal <<https://jurnal.kemendagri.go.id/index.php/mp/article/download/851/469/5187>>.

² <https://databoks.katadata.co.id/datapublish/2021/01/25/realisasi-investasi-indonesia-naik-tipis-di-tengah-pandemi>>

³ BKPM press release <<https://bkpm.go.id/id/info/siaran-pers/rilis-data-capaian-realisasi-investasi-semester-i-2023-kementerian-investasi-optimis-pertumbuhan-ekonomi-tetap-di-atas-5>>

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

The forms of FDI in Indonesia vary, encompassing the following forms:

- joint ventures between foreign investors and their domestic Indonesian partners – which can be in the form of greenfield or brownfield projects;
- purchase of minority interest in existing companies;
- acquisition of majority interest in existing companies;
- acquisition of assets;

The choice of the specific form of FDI often hinges on the interests and investment goals of the foreign investors. However, we do not have data on the division of FDI forms based on volume in Indonesia.

3. Are foreign investors allowed to own 100% of a

domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

Foreign investors can establish a limited liability company ("**PMA Company**") that can be 100% foreign-owned depending on the type of business.

Pursuant to the regulations, all business fields are open to investment, except those that (i) are determined as closed to investment, or (ii) that can only be carried out by the Government (strategic defense and security that cannot be engaged in by or be achieved in cooperation with other parties).

The regulations stipulate business fields that are:

(1) Open for investment, which includes: (a) priority business fields; (b) subject to partnerships with cooperatives and micro, small, and medium enterprises; (c) subject to specific conditions; and (d) do not fall within the categories (a) to (c). These business fields can be performed by any investor (foreign or domestic).

(2) Closed to investment, i.e.:

a. business activities stipulated in Article 12 of the Investment Law, which will be further elaborated in response Number 4 below.

b. manufacture of alcoholic liquor (under Indonesian Standard Business Classification ("**KBLI**") 11010), alcoholic beverages (KBLI 11020) and malt beverages (KBLI 11031). Every line of business in Indonesia is assigned a 5-digit KBLI, and each KBLI describes the line of business concerned.

(3) Conditionally open to FDI but subject to specific requirements and/or limitations, such as :

a. open to FDI but subject to a maximum foreign shareholding ownership, including within the framework of ASEAN cooperation, including trading/distribution, construction, transportation services;

b. open to FDI but subject to special approval from the relevant ministry;

c. specific business fields that are limited, supervised, or regulated by separate regulations on supervision and control of alcoholic beverages, and/or

d. business fields subject to partnerships with micro, small, or medium enterprises.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Generally, Indonesian company law does not restrict foreign investors from investing in and holding the same class of stock or other equity securities as domestic shareholders. Therefore, there is no differentiation on becoming shareholders in Indonesian companies, either public and private companies.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

If the business is considered to be a domestic business/company, then the company is majority-managed by Indonesian entities. When conducting business in Indonesia, it is a legal requirement for businesses to establish themselves in accordance with the forms prescribed by the law. As a result, offshore companies are not permitted to enter and directly operate in Indonesia. They must establish their business in compliance with the available legal forms under Indonesian law unless they qualify for an exemption, mainly in the oil & gas and construction sectors.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

Several forms of domestic businesses can be established in Indonesia. However, foreign investors/shareholders must use the Limited Liability Company (known as a *perseroan terbatas* or PT in Indonesia) form.

- Which form is preferred by domestic shareholders?

The preference for choosing a specific form of business in Indonesia depends on the goals, circumstances, and the type of business the domestic shareholders wish to establish. However, the PT is the form most used in Indonesia for domestic business.

- Which form is preferred by foreign investors/shareholders?
- What are the reasons for foreign shareholders preferring

one form over the other?

As above, foreign investors or shareholders can only form a PT (in the form of a PMA Company). PT is limited-liability nature, i.e., the shareholders' liability is limited to the amount of their capital contributions.

In addition to PMA Companies, Indonesia also permits another form of foreign presence such as Foreign Representative Office. There are several types of representative office, including:

- a Representative Office established under the authority of the BKPM, known as the Foreign Company Representative Office (*Kantor Perwakilan Perusahaan Asing*, "KPPA");
- a Representative Office established under the authority of the Ministry of Trade ("MOT"), known as the Foreign Trading Representative Office (*Kantor Perwakilan Perusahaan Perdagangan Asing*, "KP3A").

However, different from PMA Companies, KPPAs and KP3As are prohibited from generating income in Indonesia and, therefore, are cost centers in nature. Both types are established mainly in the interests of their principal overseas.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

- Which governmental entities have to give approvals?

The Ministry of Law and Human Rights ("MOLHR") plays a key role in authorizing the formation of a company by granting approval to a company's deed of establishment, thereby officially establishing it as a legal entity.

Aside from the MOLHR, FDI in Indonesia falls within the authority of the BKPM, which has become the Ministry of Investment. The BKPM/Ministry of Investment established the RBA OSS System as a portal to process the licensing of both Indonesian and FDI entities. As the investment authority, the BKPM can issue investment-related regulations as BKPM regulations.

Under the RBA OSS System, business activities are categorized into four main categories based on their inherent risk (low, medium-low, medium-high, high). The risk is determined by a business's impact on health, safety, environmental, and/or resource utilization aspects. For example, if a business activity does not have a significant impact on these aspects, it will be considered low-risk, and thus not be subject to complex licensing, but only need a Business Identification Number ("NIB") to carry out its business. Nonetheless, the regulations also stipulates additional business licensing obligations that are relevant to each KBLI.

Business activities that fall within other risk categories (medium-low, medium-high, high) will be subject to additional licensing requirements, Standards Certification and/or a Business License and/or a Commercial/Operating License, depending on the activity's risk level. With regard to the determination of risk classification, the ministry responsible for supervising business sectors has a pre-determined risk classification based on their assessment of the impact of business activity and input from other sources. The risk classification affects the licensing requirements for each business type, for which businesses with higher risk levels would be subject to more complex and a variety of licensing requirements.

• What is the process for forming/incorporating a domestic company?

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Before the establishment of a company, shareholders must identify the intended business activities and corresponding code from the KBLI. Usually, one KBLI (comprising 5 digits) code corresponds to one business line, and if a PMA Company has more than one business line, it must apply for more than one KBLI code. The notary should then cross-check the KBLI code(s) against the Investment List to identify whether it is subject to restrictions or a limitation on FDI.

After identifying the relevant KBLI code, the company can proceed to the establishment process. The establishment of a company in Indonesia until it is ready for commercial operation in Indonesia involves 2 stages:

a. Establishment

At this establishment stage, several steps will be taken:

1. Checking the availability of the proposed entity name for the company;
2. Signing Deed of Establishment ("DOE") which contains the Articles of Association ("AOA") of

the company;

3. Signing of Statement Letters related to the establishment of the Company;
4. Filing for MOLHR Approval on DOE. At this stage, the shareholders, Board of Directors and Commissioners must prepare and submit all of the relevant documents to the Notary;
5. Obtaining MOLHR Approval to establish the company as a legal entity.

A PMA Company (in the form of PT) obtains its legal status as a limited liability company upon issuance of MOLHR Approval.

b. Post-Establishment

The post-establishment stage centers around obtaining other licensing for the PMA Company to conduct its business activities. The following is the general steps to be taken in the post establishment stage:

1. Obtain a Taxpayer Identity Number ("NPWP") from the Directorate General of Taxation. The registration of NPWP can be done immediately by the Notary, after the issuance of the MOLHR approval. Once conducted, the PMA Company will obtain an NPWP number;
2. Obtain Right of Access (*password*) from RBA OSS System;
3. Obtain an NIB from RBA OSS System;
4. Obtaining required licenses for the PMA Company (i.e., Standards Certificate, Verified Standards Certificate, Business License as relevant) via the RBA OSS System;
5. Obtain ancillary licenses from the relevant governmental institutions such as Ministry of Manpower and other issuing authorities for ancillary and supporting licenses.

• What is a required capitalization for forming/incorporating a company?

To establish the PMA Company, there is a requirement of minimum issued and paid-up capital of at least IDR 10 billion.

Generally, the minimum investment for FDI must be above IDR 10 billion (approx. USD 700,000), excluding land and building value, per KBLI code, per project location. Although, some business activities have a higher minimum investment, including industrial, financial institutions business activities, port and business activities using sea terminal or jetty.

For industrial business activities, the minimum investment value for FDI is IDR 15 billion (approx. USD

1,070,000), excluding land and building value. This is for the following reasons:

- FDI is categorized as a large-scale business;
- the requirements for a large-scale industrial business are as follows: (i) it has more than IDR 15 billion (approx. USD 1,070,000) investment value (excluding land and buildings) and (ii) it employs 20 or more employees.

For the financial institution business activities, the minimum capitalization governed under the Financial Service Authority regulations may range from a hundred billion to trillions of Rupiah (for banks, insurance companies, multi finance companies, etc.).

- How long does it take to form a domestic company?

A PT is considered legally established after receiving approval for its deed of establishment from the MOLHR. The MOLHR has implemented an online system, AHU Online, for approval, which significantly expedites the company establishment process. Thanks to this advancement, the entire process of establishing a company may now be completed in approximately two (2) weeks.

- How many shareholders is the company required to have?

A company must have at least 2 (two) shareholders, who can be either individuals or legal entities.

- Is the list of shareholders publicly available?

Yes, lists of shareholders of PTs are publicly available. They are accessible to the public as company profiles maintained by the MOLHR.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about an acquisition of assets?

Acquisition of Private Companies

In general, acquisition of a PT is regulated under the Company Law. Acquisition is a legal action plan taken by a legal body or an individual for the taking over of the entirety or a majority of the shares of a company, which can result in the transfer of control of the company concerned. Pursuant to Article 89 of the Company Law, Acquisition must be approved by a General Meeting of Shareholders (GMS). The attendance quorum for a GMS

is 3/4 of the shares with voting rights, and the voting quorum is 3/4 of votes cast. A company's Articles of Association may stipulate a different quorum, provided that it exceeds that in Article 89 of the Company Law (4/5, 5/6, etc.).

Please note that aside from the GMS approval, companies within certain industrial sectors are also required to obtain approval from the relevant authorities. For example, acquisition involving a financial institution must be approved by the Indonesian Financial Services Authority (OJK) or the Ministry of Energy and Mineral Resources.

Acquisition of Assets

The Company Law does not specify approval on acquisition on asset. However, Article 102 (1) of Indonesian Company Law requires GMS approval for a transfer of a company's asset whose value is above 50% of the company's net worth. Further, certain formalities are required to perfect the transfer of some assets. For example, transfer of land must be made before a Land Deed Official (PPAT) and the acquisition must be registered with the acquiror's details.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

Approval is not required to acquire shares in a public company on the domestic market or to acquire shares through a direct (private) transaction from another shareholder.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

Yes. The acquirer must conduct a mandatory tender offer for every acquisition of public company which results in the change of the controller in a public company. A controller is defined as someone who:

- Owns more than 50% of all fully paid-up voting shares in a public company; or
- Has the ability to determine, either directly or indirectly, in any way, the management and/or policies of a public company.

A Mandatory Takeover Offer (MTO) must extend to the shares owned by all shareholders other than those owned by:

- a. a shareholder that has taken part in the takeover transaction with the new Controller;
- b. another person that has already received an offer with the same terms and conditions from the new Controller;
- c. another person who, at the same time, is making either an MTO or voluntary tender offer for the same public company's shares;
- d. the 'Primary Shareholder' (i.e., a shareholder who owns more than a 20% stake in the target company); and
- e. another Controller's shares of the said public company.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

For greenfield, this is part of establishment process elaborated above, while brownfield, a PMA company would need to ask for expansion of the existing facility through RBA OSS System

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Rupiah must be used in:

- a. all transactions with a payment purpose;

b. settlement of other obligations that must be made with money; and/or

c. other financial transactions carried out within the territory of Indonesia.

However, the above is exempt from:

- a. Specific transactions in the execution of the state revenue and expenditure budget;
- b. Receipt or grant of aid from or to foreign countries;
- c. International trade transactions;
- d. Foreign currency deposits in banks; or
- e. International financing transactions.

Therefore, the acquisition can be conducted in other currencies if both of the parties (the seller and the buyer) are foreign entities or foreign nationals and the transaction is conducted outside of Indonesia. On the other hand, the payment of contractors or salaries by an Indonesian company must be conducted in Rupiah.

- Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

Generally no. The transfer of foreign exchange to and from abroad is, however, subject to a reporting requirement to the Indonesian Central Bank (Bank Indonesia, BI).

- Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

Generally no, however, the utilization of foreign exchange in Indonesia is subject to the above BI reporting requirements.

- Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

Generally no. However, banks conducting foreign exchange transactions against Rupiah are required to ensure that foreign exchange transactions in the form of: (i) cash-purchase transactions and (ii) exchange rate derivative transactions with nominal value above a certain threshold, have an underlying transaction. Please also note that the nominal value of such foreign exchange transactions against Rupiah must not exceed the nominal value of the underlying transaction and that its term must not exceed the term of the underlying transaction.

- Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Indonesian Rupiah cannot be purchased outside Indonesia. In essence, the utilization of Rupiah outside of Republic Indonesia by Indonesian or non-Indonesian citizen is prohibited, except:

- To achieve the objectives of the Rupiah's usage policy in international activities;
- There are benefits for the national economy and the stability of the financial system; and
- Other considerations as determined by BI.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

Indonesian Rupiah cannot be transferred outside the country. The transfer of foreign currency out of the country is not subject to approval requirements but must be reported to BI.

- Whose approval is required?

Not applicable.

- How long does it take to get the approval?

Not applicable.

- Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

Not applicable.

- Is the approval required for each transfer or can it be granted for all future transfers?

Not applicable.

14. Is there a tax or duty on foreign currency conversion?

To the best of our knowledge, there is no tax or duty on

foreign currency conversion.

Nonetheless, please consult with a qualified tax advisor as we are not qualified to provide tax advice.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

As above.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

We are not qualified to provide tax-related advice. Please consult with a qualified tax advisor.

17. When is a stamp duty required to be paid?

Stamp duty under Indonesian law context may differ as compared to foreign law jurisdiction. A stamp duty locally known as *materai* is affixed to contracts or other documents in order to endow them with greater evidentiary credibility in court (than they would otherwise have if the *materai* were not affixed). *Meterai can also be affixed after execution of the document, called post-hoc in a nazegeleen.*

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

Yes, the process of share transfer in private domestic companies is fairly straightforward, unless it results in a change of control of the company, which would require additional administrative process under the Company Law (i.e., announcement in newspaper pre and post transaction, etc).

- Can the shares be held outside of the home jurisdiction?

Yes, the shares certificates can be held outside of the Republic of Indonesia.

- What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

In general, there is no specific approval that needs to be obtained for a foreign investor to transfer shares to another foreign or domestic shareholder. However, in certain business sectors (e.g., mining), approval from or notification to the relevant authority may be required under the prevailing regulations for transferring shares in a company engaging in that particular sector.

- Are changes in shareholding publicly reported or publicly available?

The changes in shareholding of a company would need to be reported publicly by way of newspaper announcement if it results in a change of control over the company, which would be deemed an acquisition transaction under the Company Law.

Nonetheless, all data of notarial deeds and the corresponding MOLHR's approval and/or notification receipt of a company (including historical changes in shareholding) would be accessible to the public upon request and payment of certain fee to the MOLHR via its website (www.ahu.go.id).

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

No, upon the establishment of the RBA OSS System, there is no specific mandatory filing that must be made for FDI. All investments (domestic or foreign) must now be registered with the authority via the RBA OSS System and obtained the relevant business licensing.

- With which agency is it required to be made?

Not applicable.

- How long does it take to obtain an FDI approval?

Not applicable.

- Under what circumstances is the mandatory FDI filing required to be made?

Not applicable.

- If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

The RBA OSS System integrates all restrictions, provisions and requirements relating to FDI under the prevailing laws and regulations. The system is supposed to be an automatic screening control by the authority of any FDI transaction within Indonesian territory, meaning that it will generally block any FDI transaction to be registered in the system that is not in line with the prevailing regulations. In addition, the authority may also perform a post audit to companies registered in the RBA OSS System as part of its supervision duty, and provide recommendation to any findings from the audit, which can be in the form of guidance, mitigation, and/or imposition of sanction.

Prior to registering the FDI in the RBA OSS System, the transaction would generally need to be registered with the MOLHR via the notary. Normally, the notary would refuse to proceed with a FDI transaction that is not in line with the prevailing regulations, as there may be issues with the registration process in the MOLHR and/or RBA OSS System later. In practice, access of the company to the MOLHR's online system might also be blocked upon request of interested parties.

- If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction?

No. However, the transaction could trigger a merger filing with the Indonesian Competition Commission (KPPU), if all of the following criteria are met:

- 1) the transaction meets the following threshold criteria:

- Combined asset value in Indonesia exceeds IDR 2,500 billion (approx. USD 162 million); and/or
- Combined sales value in Indonesia exceeds IDR 5 trillion (approx. USD 324 million).

- 2) the transaction results in a change of control;
- 3) the transaction is between non-affiliated parties;
- 4) the transaction is between undertakings having assets and/or sales in Indonesia.

• Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

No, Indonesian merger control regime adopts post-merger notification. As Indonesia has a post-merger system, there are no waiting periods, and the implementation of the transaction does not have to be suspended prior to clearance.

20. What are typical exit transactions for foreign companies?

The most typical exit transaction for foreign companies is through share transfer in foreign investment companies. In other cases, foreign companies may also opt to dissolve the foreign investment companies, which would trigger a long and complicated process, compared to the first option.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

The choice largely depends on the commercial objectives of the companies. In Indonesia, the majority of companies typically choose to conduct an IPO on the domestic market. To the best of our knowledge, only two state-owned enterprises have listed their shares abroad on the Australian Stock Exchange and the New York Stock Exchange, simultaneously with listing their shares on the domestic market (dual listing). *(However, there are Indonesian companies with foreign entities as controllers that are listed on foreign stock markets.)*

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

First, we assume that the term "investment agreements" means agreements between foreign and Indonesian parties or between foreign parties under which they agree to invest and carry out business activities in Indonesia by establishing or through an Indonesian company.

In our experience, foreign parties tend to choose a foreign arbitration body as the dispute resolution forum in their

agreements, especially in agreements involving a large transaction value. Agreements of cross-border M&A, investment, JV transactions involving foreign parties that we are aware of also usually have dispute resolution provisions under which a foreign arbitration body is the chosen dispute resolution forum for any dispute, controversy, or claim arising out of the agreements. In Indonesia, we found that the foreign parties typically prefer Singapore International Arbitration Centre (SIAC) or Hong Kong International Arbitration Centre (HKIAC) as the dispute resolution forum.

Indonesian domestic courts are probably not foreign investors' preferred dispute resolution forum. However, we are aware that sometimes they agree to use Indonesian local arbitration body, such as Indonesian National Board of Arbitration (BANI).

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

A civil case proceeding in Indonesia could involve 3 layers of court, namely the District Court as the court at first instance, the High Court as the appeal court, and the Supreme Court as the cassation court. In Indonesia, appeal is a right, meaning there is no requirement for the appellant to provide strong grounds for it. Appeals are often instigated to avoid a matter becoming actual costs and losses, or to maintain strategic options to achieve a commercial settlement. Further, often, parties to a dispute bring the case up until the appeal level or even cassation. Consequently, it may take a long time to get a final and binding decision from Indonesian courts.

Under the guidelines provided by the Supreme Court, the duration of the proceedings at each instance is limited as follows:

- District Court: 5 months
- High Court: 3 months
- Supreme Court: 250 days

In practice, however, the entirety of court proceedings in Indonesia can take up to more than 3 years to complete.

In addition to the above, Indonesian law provides civil review (*peninjauan kembali*) as an extraordinary legal remedy against a final and binding judgment rendered by Indonesian courts (a decision of the District Court that was not appealed within the prescribed time, a decision of the High Court that was not filed for cassation within the prescribed time, or a decision of the Supreme Court in cassation). This civil review can only be filed on limited

grounds but with the same duration mentioned above (i.e., 250 days).

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

While the Indonesian court can (arguably) be considered reliable to hear and examine cases involving foreign investors based on the above court's principles, we also understand that from the perspective of foreign investors, foreign arbitration might be more preferable for the following reasons:

- The disputing parties can choose arbitrators who are experts in the disputed matter and hence, should be more capable of examining the dispute;
- Relatively shorter proceeding; and
- The disputing parties can agree on a specific procedural aspect such as the use of English language in the proceeding.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

We cannot find any official data on the total number of investment disputes involving the Indonesian government and the forum of settlement of such disputes. Nonetheless, we understand that Indonesia has been brought before the arbitration under International Centre for Settlement of Investment Disputes ("ICSID") by foreign investors a few times.

Other than arbitration under ICSID, companies which have contracts with the Indonesian government which are still valid and recognized to date (e.g., coal contract of work for coal mining or contract of work for minerals mining) may file an arbitration claim against the government with the arbitration body agreed upon by the parties in the contracts. The claim shall be filed on the ground that the Government of Indonesia has breached the contract made by the parties.

Depending on the nature and object of the dispute, foreign investors can also use Indonesian courts as the forum to bring dispute against Indonesian government. For example, a foreign investor (through their Indonesian company) can file a claim with the Indonesian State Administrative Court against the relevant officer of the Indonesian government for improper revocation of license.

26. Are international arbitral awards recognized and enforced in your country?

Yes, international arbitral awards are recognized and can be enforced in Indonesia, subject to fulfilment of the requirements under relevant legislation. Foreign arbitration awards can be recognized and enforced in Indonesia if the following conditions are fulfilled:

- i) The award was rendered by an arbitrator or arbitral tribunal in a country bound to Indonesia through an agreement, either bilaterally or multilaterally, on the recognition and execution of international arbitration awards;
- ii) The international arbitration award is one that, according to the provisions under Indonesian law, falls within the scope of trade law;
- iii) The international arbitration award is consistent with public order;
- iv) The international arbitration award can only be enforced in Indonesia after obtaining an exequatur from the Chief of Central Jakarta District Court; and
- v) If the international arbitration award involves the Republic of Indonesia as one of the disputing parties, it can only be enforced after obtaining an exequatur from the Supreme Court of the Republic of Indonesia which will be delegated to the Central Jakarta District Court.

Regarding the first requirement mentioned above, Indonesia is a signatory to the 1958 New York Convention. Thus, if the country where the arbitration takes place (seat of arbitration) is also a party to the 1958 New York Convention, arbitration award obtained in such country can be recognized and enforced in Indonesia.

27. Are there foreign investment protection treaties in place between your country and major other countries?

Indonesia has entered into a number of treaties with other countries that provide fair and equitable treatment to, as well as full protection and security over, investment made by investors of a contracting party in the territory of the other party.

Generally, these treaties require the host country to accord to the investors' investment treatment of no less favorable than the treatment it accords to its own investors or investors from non-contracting countries and provide protection and security over the investors'

investment.

Among others, Indonesia has entered into Bilateral Investment Treaties (BIT) with United Arab Emirates, Singapore, Russia, Denmark, Finland, Saudi Arabia, Qatar, Republic of Korea, and the United Kingdom⁷. In addition, Indonesia has also entered into a number of Comprehensive Economic Partnership Agreement (CEPA) with other countries, among others are CEPA with Republic of Korea, Australia, and Japan⁸.

Further, as a member of ASEAN countries, Indonesia is a contracting party to various agreements with investment

provisions between ASEAN countries and other countries as well as special administrative region outside of the region, including Hong Kong, China, Australia, and New Zealand⁹.

Footnotes:

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<https://investmentpolicy.unctad.org/international-investment-agreements/countries/97/indonesia>

⁸ Ibid

⁹ Ibid

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