WORLD BANK GROUP

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# 2019
# INVESTMENT POLICY AND REGULATORY REVIEW

## Indonesia

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# ACKNOWLEDGEMENTS

A team led by Priyanka Kher and Peter Kusek prepared this report. The team core members were Maximilian Philip Eltgen and Azza Raslan. The team would like to thank Caroline Freund (Global Director, Trade, Investment and Competitiveness), Christine Zhenwei Qiang (Practice Manager, Investment Climate), Ivan Nimac (Global Lead, Investment Policy and Promotion), Georgiana Pop (Global Lead, Competition Policy) and Graciela Miralles Murciego (Senior Economist, Competition Policy) for their guidance.

Legal research for the preparation of this report was carried out by the international law firm Baker McKenzie.

The report benefited from the comments of these World Bank colleagues: Rolande Simone Pryce, Massimiliano Cali, Bertine Kamphuis, Tanja K. Goodwin, Sara Nyman, Mariana Iootty De Paiva Dias, Guilherme De Aguiar Falco, Emma Verghese and Abhishek Saurav.The team would like to thank Nick Younes for editing, and Aichin Jones and Brew Creative Pte Ltd for providing design, layout, and production services.

The report was prepared under the Analyzing Barriers to Investment Competitiveness Project, supported with funding from the Prosperity Fund of the United Kingdom.

# GLOSSARY

| | |
|---|---|
| ACIA | ASEAN Comprehensive Investment Agreement |
| ASEAN | Association of Southeast Asian Nations |
| BI | Bank Indonesia |
| BKPM | Investment Coordinating Board |
| BSI | Indonesia National Bureau of Standards |
| CA | Competition Authority |
| CPC | Central Product Classification |
| CPTPP | Comprehensive and Progressive Agreement for Trans-Pacific Partnership |
| CSR | Corporate Social Responsibility |
| DKI | Special Capital Region (of Jakarta) |
| DTAA | Double Taxation Avoidance Agreements |
| FDI | Foreign Direct Investment |
| FET | Fair and Equitable Treatment |
| FIE | Foreign-Invested Enterprise |
| GATS | General Agreement on Trade in Services |
| GPGG | General Principle of Good Governance |
| ICSID | International Centre for Settlement of Investment Disputes |
| IIA | International Investment Agreement |
| IIPC | Indonesia Investment Promotion Centre |
| IPR | Intellectual Property Rights |
| IPRR | Investment Policy and Regulatory Review |
| ISDS | Investor-State Dispute Settlement |
| JDIH | National Documentation Network and Legal Information |
| KBLI | Indonesian Business Classification Codes |
| L/C | Letter(s) of Credit |
| MFN | Most-Favored-Nation |

| | |
|---|---|
| MOE | Ministry of Employment |
| MOF | Ministry of Finance |
| MoHA | Ministry of Home Affairs |
| MP3EI | Masterplan for Acceleration and Expansion of Indonesia's Economic Development |
| NIB | Business Identity Number |
| OFDI | Outward Foreign Direct Investment |
| OSS | Online Single Submission |
| PKLN | Offshore Commercial Loan Coordinating Team |
| PMA | Foreign Capital Cultivation Company |
| PPIR | Prudential Principles Implementation Reports |
| RCEP | Regional Comprehensive Economic Partnership Agreement |
| Rp | Rupiah (currency) |
| RPJMN | National Medium Term Development Plan |
| RPJPN | National Long Term Development Plan |
| RPTKA | Expatriate Manpower Utilization Plan |
| SCM | Agreement on Subsidies and Countervailing Measures |
| SNI | Indonesian National Standard |
| SOE | State-Owned Enterprises |
| TRIMs | Agreement on Trade-Related Investment Measures |
| TRIPS | Agreement on Trade-Related Aspects of Intellectual Property Rights |
| UNCTAD | United Nations Conference on Trade and Development |
| VAT | Value-Added Tax |
| WTO | World Trade Organization |

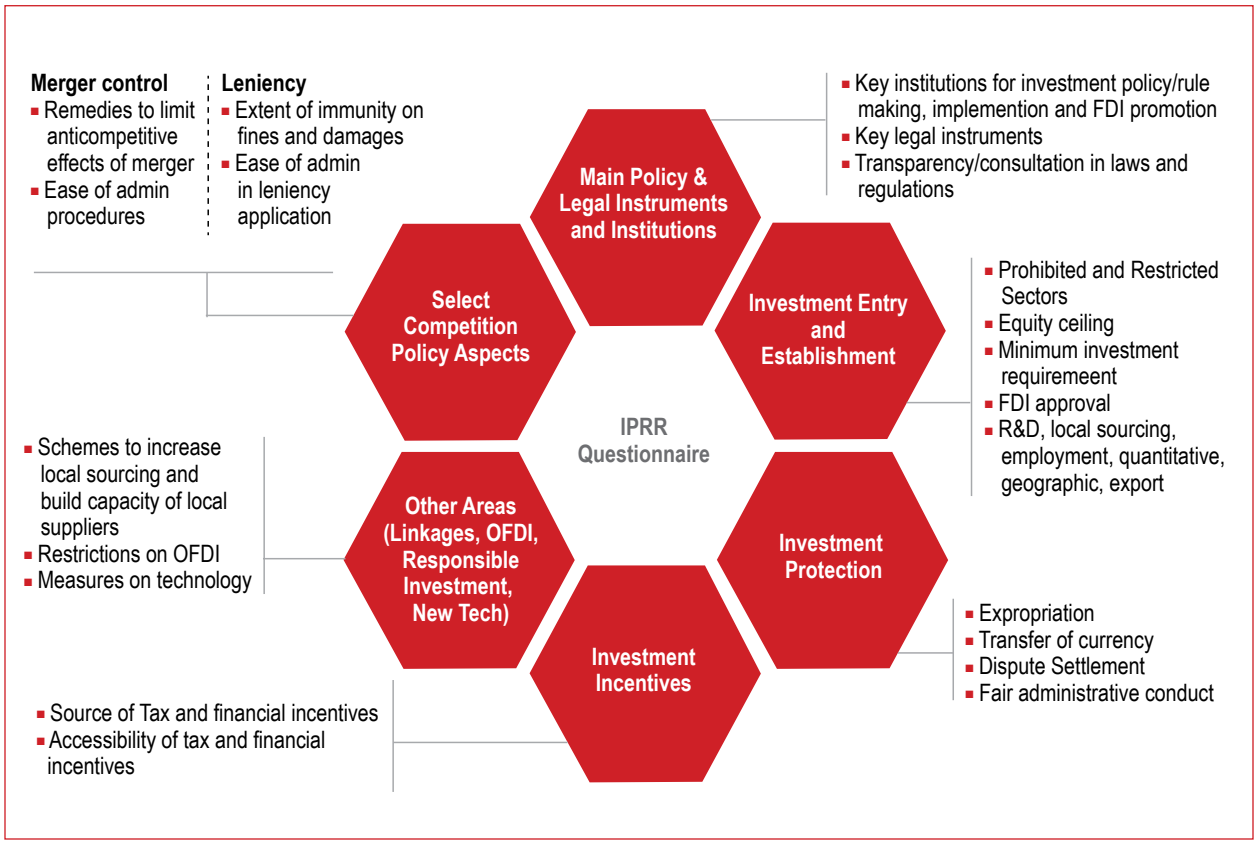
# 1. INTRODUCTION

**This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) and competition that affect businesses and foreign investors in Indonesia.** Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries (MICs): Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

**The research for preparing this IPRR was undertaken by the international law firm Baker McKenzie, under the supervision of the World Bank Group.** The research was primarily based on a review of currently applicable policies, laws and regulations. In some cases, consultations with regulators were conducted to collect up to date information.

**The research was guided by a standardized questionnaire, covering a limited set of topics, including foreign investment entry, establishment, protection and select competition related aspects.** The questionnaire focused on de jure frameworks as generally applicable to a foreign investor, not located in any specialized or preferential regime (such as special economic zones). It primarily focused on national, economy-wide (rather than sector-specific) laws and regulations. For the purpose of the research, it was assumed that the foreign investor is a private

**Figure 1. Overview of Topics Covered in IPRR**



multinational company with no equity interest or management control by the government of its home country (that is, not state-owned enterprise).

**There are aspects that this IPRR does not cover. It is not a comprehensive review of the entire legal and regulatory framework affecting investment.** Information presented is not exhaustive, but illustrative of the main topics and issues covered (for example, it does not exhaustively list all available tax and financial incentives in the country). It does not present recommendations on reform areas. Notably, it does not capture de facto implementation of laws and regulations in the country. Given these limitations, information presented in this IPRR should be interpreted and used keeping in view the overall country context and realities. Further, it contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed legal research.

**This IPRR is organized as follows:**

- Section 2 provides an overview of the country's investment policy framework, including the legal instruments regulating foreign investment, key institutions involved in investment promotion, as well as the country's foreign investment promotion strategy; it also delineates the country's international investment legal framework, including the country's commitments under the World Trade Organization (WTO) and select international investment agreements (IIAs);
- Sections 3-6 cover the country's policies and domestic legal framework concerning different dimensions of the lifecycle of an investment: entry and establishment (Section 3), protection (4), incentives (5) and linkages (6);
- Sections 7-9 explore emerging investment policy and regulatory areas—Section 7 considers outward FDI, Section 8 responsible investment, and Section 9 considers recent policies on new technologies;
- Section 10 focuses on city-specific investment policy and regulatory measures in the largest commercial center; and
- Section 11 covers select aspects of competition law and policy, specifically merger control and leniency frameworks.

# 2. OVERVIEW OF INVESTMENT POLICY FRAMEWORK

## A. Domestic Legal Instruments Regulating Foreign Investment

### FDI Law and Regulation

**The primary law regulating foreign investment and the inflow and outflow of foreign capital in Indonesia is Law No. 25 of 2007 on Capital Investment (Law on Capital Investment or Law No. 25 of 2007).** The primary regulations are the Investment Coordinating Board (BKPM) Regulation No. 6 of 2018 on Guidelines and Procedures for Capital Investment Licensing and Facilities (BKPM Regulation No. 6 of 2018), and the Presidential Regulation No. 44 of 2016 on List of Business Activities Closed and Open for Investment (Presidential Regulation No. 44 of 2016 or the 2016 Negative List). The law and the regulations apply equally to domestic investment. The Law on Capital Investment provides for non-discrimination (national treatment and most-favoured treatment), as well as for the principles of certainty, openness, impartial efficiency, sustainability, business security, and accountability as they pertain to implementing capital investment in the country. The main objectives of the Law are to increase national economic growth, create job opportunities, improve sustainable economic development, improve Indonesia's competitiveness, and increase its national technological capability.

**The Law on Capital Investment defines "capital investment" as all forms of capital investing activity both by domestic and foreign investors (who may be a foreign individual, enterprise or government) to undertake business within the territory of Indonesia.** "Foreign investment" is defined as investment activity to conduct business in the territory of Indonesia by a foreign investor, whether using entirely foreign capital, or in partnership with a domestic investor.

**Foreign investment is also subject to sector-specific laws and regulations. Sectoral laws also include restrictions for foreign investors.** The main regulatory body for FDI is the BKPM, but depending on the business activity, approvals may be required from specific industry regulators.

### Public Access to Foreign Investment Laws and Policies

**There is an obligation for the government to ensure public access to all laws and regulations, including on foreign investment, through the requirement to publish all laws and regulations.** Law No. 12 of 2011 on Formation of Laws and Regulations (Formation Law) requires that an enacted regulation be published in the following gazettes: (i) the state gazette, (ii) additional state gazette, (iii) state news gazette, (iv) additional state news gazette (v) regional gazette, (vi) additional regional gazette or (vii) regional news gazette. Indonesia adopts the presumptio iures de iure principle, whereby it is assumed the public knows the laws and regulations. This is in line with Article 81 of the Formation Law, which stipulates that the public is deemed to know the laws and regulations after such laws and regulations have been officially promulgated.

**The Government of Indonesia has undertaken measures to ensure that the public has better access to laws and regulations.** For example, it established the National Documentation Network and Legal Information (JDIH), a platform where the public can access legal information. Many provincial governments have established their own JDIH website. In relation to foreign investment, BKPM has its JDIH platform, which provides access to foreign investment-related regulations (although not necessarily comprehensive). BKPM's JDIH platform is accessible here.

### Consultation with Stakeholders

**Based on Article 96 of the Formation Law, the public has the right to give any verbal and/or written advice to the government in relation to draft laws and regulations.** The law also specifies

the category of public that can give such advice, that is, an individual or a group that has an interest in the substance of the draft laws and regulations. However, the prevailing law does not impose any obligations on the government to ensure that consultation with the public is conducted prior to passing of any laws and regulations.

### Predictability and Stability in Policies and Rules

**The Formation Law gives the Constitution Law 1945 the final authority in legal matters in Indonesia. It stipulates that any inferior law shall not contain provisions conflicting with the Constitutional Law of 1945.** The Formation Law also allows the review of any regulation that may be deemed in conflict with a superior regulation. It dictates the following hierarchy of regulations:

- Constitutional Law of 1945
- The decision of the People's Consultative Assembly of the Republic of Indonesia (Majelis Permusyawaratan Rakyat)
- Law, or Government Regulation in Lieu of Law
- Government Regulation
- Presidential Regulation
- Provincial Regional Regulation
- Regency Regional Regulation

Under the Formation Law the Government and People's Representative Council of Indonesia need to disseminate a draft of a rule before its passage into law, for the purpose of providing information to the public and interested parties.

**Rules may also not apply retroactively, with certain exceptions.** The Annex to the Formation Law states that generally a law should be effective on the date of its enactment. However, it also provides that an alteration of the effective date is possible if it was expressly stated in the law, among other things, by providing a specific effective date of the law or delegating the determination of the effective date to another law with the same hierarchy. Law No. 30 of 2014 on Government Administration also stipulates that the effective date of a decision by the government may be retroactive, if it is necessary to avoid (i) a greater damage and/or (ii) disregard to the rights of the citizen.

**As noted above, the Law on Capital Investment states that the implementation of capital investment is based on the principles of, among others, legal certainty and accountability.** The Law further provides that each investor is entitled to (i) certainty of rights, law and protection, (ii) transparent information on the business sectors being operated, (iii) rights to service, and (iv) all facilities under prevailing laws and regulations.

## B. International Legal Instruments Regulating Foreign Investment

**Indonesia has undertaken legally binding international investment commitments through a variety of international investment agreements (IIAs) — signed at the bilateral, plurilateral and multilateral level.** These commitments mainly cover entry and establishment conditions, protection, as well as the legality of specific types of incentives (see Table 1.). It is important for Indonesia to reflect these commitments in its domestic legal framework to ensure consistency as well as to monitor their compliance.

**Having been a member of the WTO since January 1, 1995, Indonesia has commitments under several WTO Agreements.** Under the General Agreement on Trade in Services (GATS), Indonesia grants rights to services suppliers from other WTO member countries. This includes services supplied through commercial presence (defined as establishment of a territorial presence), in other words through FDI. These rights are granted through commitments undertaken in "schedules". The "schedules" list sectors being opened, the extent of market access granted in those sectors (for example, whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). Indonesia has made commitments on market access and national treatment in 6 out of 12 services sectors that feature in the WTO Classification:[1] (i) Business services,

**Table 1. Indonesia's International Investment Framework**

| Agreement(s) as Basis of Commitments | Type of Agreement | Investment Policy Dimensions Covered |
|---|---|---|
| WTO GATS Agreements | Multilateral | Entry and establishment |
| WTO TRIMs Agreement | Multilateral | Entry and establishment incentives |
| WTO SCM Agreement | Multilateral | Incentives |
| WTO TRIPS Agreement | Multilateral | Protection |
| Treaties with Investment Provisions (19 signed, 14 in force) | Plurilateral or Bilateral | May cover entry and establishment, protection, incentives |
| Bilateral Investment Treaties (42 signed, 26 in force) | Bilateral | May cover entry and establishment, protection, incentives |
| International Centre for Settlement of Investment Disputes (ICSID) Convention | Multilateral | Protection (Dispute settlement) |
| Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) | Multilateral | Protection (Dispute settlement) |
| IMF Articles of Agreement (Art. VIII Acceptance) | Multilateral | Protection |
| Double Taxation Avoidance Agreements (68 treaties in force) | Bilateral | Taxation |

Source: World Bank Analysis

(ii) Communication services, (iii) Construction and related engineering services, (iv) Financial services, (v) Tourism and travel related services, and (vi) Transport services. In these sectors, Indonesia has made partial commitments on market access and national treatment for specific services in 15 sub-sectors. "Partial" means that although commitments have been made, there are still limitations and/or reservations, which may differ in their restrictiveness. For example, they may be more restrictive by limiting the equity contribution of the foreign investor or less restrictive by merely requiring foreign service suppliers to become a member of a union chamber. In addition, under GATS every member is obligated to unconditionally extend to service suppliers of all other WTO members Most-Favored Nation (MFN) Treatment. However, Indonesia has made reservations in that regard in two services sectors: Construction and related engineering services, and Financial services. For example, Indonesia reserves the right to maintain preferential shortlisting schemes for Association of Southeast Asian Nations (ASEAN) contractors of civil works or industrial construction.

**Under the WTO Agreement on Trade Related Investment Measures (TRIMs), Indonesia has committed not to apply certain investment measures that restrict or distort trade (local content requirements, trade balancing requirements, foreign exchange restrictions and export restrictions).** These measures are prohibited both when the obligation for the foreign investors is mandatory and when it is tied to obtaining an advantage (that is, an incentive). Incentives are further regulated by the WTO Agreement on Subsidies and Countervailing Measures (SCM), which prohibits, among others, certain types of export subsidies. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), foreign investors' intellectual property rights are protected. In case of a violation of any of its WTO commitments, Indonesia may be sued under the WTO dispute settlement mechanism.

**Indonesia has further entered into obligations through international investment agreements — 26 Bilateral Investment Treaties (BITs) and 14 Treaties with Investment Provisions (TIPs) are currently in force.** The latter category comprises treaties that include obligations commonly found in BITs (for example, a preferential trade agreement with an investment chapter. Table 2. provides an overview of select IIAs: Indonesia's

latest IIA (Indonesia-Qatar BIT, 2018), an IIA with expansive regional coverage (ASEAN-China Investment Agreement, 2010), as well as its IIA with the largest home country measured by that country's share in Indonesia's total FDI stock (ASEAN Comprehensive Investment Agreement, ACIA, 2012). The table shows that although generally the main protection guarantees are provided in the reviewed agreements, the BIT with Qatar provides for less protection because it does not include national and most-favored nation treatment. Both ACIA and the ASEAN-China Investment Agreement include the prohibition of performance requirements. Whereas the former makes a reference to TRIMs, the latter prohibits a larger number of performance requirements than in TRIMs (a so-called TRIMs+ standard).

**Some of Indonesia's reviewed IIAs contain commitments to liberalize.** Both the ASEAN-China Investment Agreement and ACIA include such commitment, but with a different scope

**Table 2. Comparison of Indonesia's Select IIAs**

| | **Largest Home Country IIA (% of total FDI stock):** ASEAN Comprehensive Investment Agreement (2012) (Singapore) | **Latest IIA (date of entry into force):** Indonesia-Qatar BIT (2018) | **Expansive Regional Coverage IIA (highest number of members):** ASEAN-China Investment Agreement (2010) |
|---|---|---|---|
| **Scope of Application** | | | |
| **Covers Pre-establishment** | Yes | No | Yes |
| **Exclusions from Scope** | Taxation measures (with exceptions), government procurement, subsidies or grants, services supplied in exercise of governmental authority | No | Taxation (except expropriation and transfers), government procurement, subsidies or grants, services supplied in the exercise of governmental authority |
| **Standards of Treatment** | | | |
| **National Treatment (NT)** | Pre- and post-establishment | No | Post-establishment |
| **Most-Favored-Nation Treatment (MFN)** | Pre- and post-establishment | No | Pre- and post-establishment |
| **Fair and Equitable Treatment (FET)** | Yes | Yes | Yes |
| **Full Protection & Security** | Yes | Yes | Yes |
| **Expropriation** | Direct and indirect expropriation, payment of compensation | Direct and indirect expropriation, payment of compensation | Direct/indirect expropriation and payment of compensation |
| **Rights to Transfer Funds** | Yes | Yes | Yes |
| **Prohibition of Performance Requirements** | Reference to TRIMs | No | TRIMs+ (Prohibiting a larger number of performance requirements than TRIMs) |
| **Dispute Resolution** | | | |
| **State-State Dispute Settlement** | Yes | Yes | Yes |
| **Investor-State Dispute Settlement** | Yes | Yes | Yes, limited to post-establishment |

Source: World Bank Analysis based on IIAs obtained from United Nations Conference on Trade and Development (UNCTAD) Investment Policy Hub

and under reservations. ACIA offers both pre-establishment national treatment and MFN, but only in specific sectors: manufacturing, agriculture, fishery, forestry, mining and quarrying, as well as in services incidental to these. Reservations are included as country-specific schedules. The ASEAN-China Investment agreement offers pre-establishment most-favored nation treatment and reserves all existing measures that are not in compliance with that treatment. In addition, both treaties generally exclude the following from the scope of the treaty: taxation measures, measures governing government procurement, subsidies or grants provided by one of the Parties, or services supplied in exercise of governmental authority.

**Indonesia has in recent years overhauled its bilateral treaty commitments.** Since 2014 Indonesia has effectively terminated 22 BITs, mostly on a unilateral basis. Indonesia is also currently reviewing its model BIT. In that regard it is considering providing investor-state dispute settlement (ISDS) on a case-by-case basis, requiring the exhaustion of local remedies as a pre-condition, as well as making mediation mandatory. At the same time, Indonesia is in the process of entering regional or "megaregional" agreements. Indonesia is involved in ongoing negotiations on the Regional Comprehensive Economic Partnership Agreement (RCEP), which covers ASEAN member states as well as large economies in the pacific area such as China, Australia, and Japan. Moreover, in 2018 Indonesia expressed interest to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). CPTPP is a trade and investment agreement between 11 countries, covering a market of 500 million people, 13.5% of world GDP, and 15.3% of world trade.

**Indonesia is a member of treaties covering investment arbitration.** It is a member of the New York Convention and the International Centre for Settlement of Investment Disputes (ICSID Convention), facilitating the enforcement of arbitral awards. It has to date been a respondent in seven publicly known investor-State arbitrations. One of these cases has been settled, three decided in favor of the State, two discontinued and one decided in favor of neither party (liability found but no damages awarded).

**Acceptance of Art. VIII of the IMF Articles Agreement requires Indonesia to maintain current account convertibility, enabling investors to transfer certain payments related to their investments.** Indonesia is also party to 68 Double Taxation Avoidance Agreements (DTAAs) that are in force, influencing its ability to tax foreign investors and investments.

## C. Key Institutions for Investment Promotion

Indonesia has national and sub-national (regional and provincial) level investment promotion agencies charged with investment promotion functions for all economic sectors.

### National Level Institutions

**The Investment Coordinating Board, an independent government agency that directly reports to the President of the Republic of Indonesia, is the main institution responsible for investment promotion in Indonesia (see Box 1).**

The BKPM is also charged with regulatory functions, including but not limited to issuing regulations related to foreign investment. Before the government established an Online Single Submission (OSS) system on July 9, 2018, to consolidate most license applications into one online system, business licenses for most foreign investment companies had been issued by BKPM. On January 2, 2019, the OSS system operation was transferred from the Coordinating Ministry of Economic Affairs to BKPM (see further Section 3 – Investment Entry and Establishment – Foreign Investment Approval).

### Box 1. Investment Coordinating Board (BKPM) —Composition and Main Functions

**The BKPM was established in 2007 to coordinate and facilitate investment promotion implementation and investment partnership, among other functions.** The President Regulation No. 90 of 2007 on BKPM, as amended, stipulates its composition, main duty and functions.

The BKPM is composed of:

- Chairman
- Co-chairman
- Secretary General
- Deputy Chairman for investment planning
- Deputy Chairman for investment climate development
- Deputy Chairman for investment promotion
- Deputy Chairman for investment cooperation
- Deputy Chairman for investment services
- Deputy Chairman for investment supervision and controlling
- Inspectorate

**Its main mandate is to coordinate policies and services relating to capital investment based on the provisions of laws and regulations of the country, and its functions include the following:**

- Analysing and proposing national investment planning
- Coordinating implementation of national policies in the field of investment
- Analysing and proposing policies of investment services
- Determining norms, standards, and procedures for the implementation of investment services
- Developing opportunities and potential investments in the region by empowering business entities
- Creating investment maps in Indonesia
- Coordinating promotional activities and investment cooperation
- Developing investment sectors through investment fostering by, among others, promoting partnerships, improving competitiveness, creating healthy competition, and disseminating the broadest information in terms of investment activities
- Fostering the implementation of investment, assisting in the settlement of various obstacles, and providing consultations on problems faced by investors in carrying out investment activities
- Coordinating and implementing one-stop services
- Coordinating domestic investors that are investing outside Indonesia
- Providing licensing services and investment facilities
- Fostering and serving general administration in the areas of planning, administration, organization and governance, employment, education and training, finance, law, public relations, archiving, data and information processing, and household equipment
- Implementing other functions in the field of investments in accordance with the provisions of the legislation

**The BKPM has established the Indonesia Investment Promotion Centre (IIPC), an official representative of BKPM in other countries. This entity is in charge of promoting Indonesian investment to potential investors abroad.** The IIPC's functions are:

- To carry out investment marketing campaigns and provide investment information;
- Coordinate and synchronize investment marketing programs with Indonesian representatives, relevant institutions in the respective state of domicile and working area, as well as government institutions and business entities in Indonesia;
- Facilitate investment mission from the respective state of domicile and working area to Indonesia and investment mission from Indonesia to the respective state of domicile and working area;
- Facilitate investment problem solving of new or existing investors and encourage investment realization from the state of domicile and working area that have received licenses from BKPM;
- Monitor investment interest and policy in the respective state of domicile and working area;
- Facilitate Indonesian investors who invest in the respective state of domicile and working area
- Propose the work programs and budget needs in order to accomplish the duties and achieve the investment targets set by BKPM;
- Perform other duties given by BKPM and the head of Indonesia representatives in the respective state of domicile.

**Under President Regulation No. 90 of 2007 on BKPM, as amended, a "high level" Investment Committee has been established to conduct research and obtain insights from experts, stakeholders and public figures for the purpose of investment development.** The Committee is led by the chairman of BKPM and composed of 9 members, who are experts, stakeholders and public figures in the field of investment. The Committee does not specifically focus on foreign investment only, but investment in general.

### Sub-National Investment Promotion Agencies

**Article 30 of the Law on Capital Investment empowers regional and provincial governments to implement capital investment activities that fall within their authority.** Most local governments at the province and regency level generally have their own local investment agency. The name of this agency may vary from one local government to another, but it is commonly called *Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu* or the Investment and One-Door Integrated Services Agency.

Although the establishment of the Online Single Submission System (OSS) in 2018 has centralized and integrated licensing processes (see further Section 3 – Investment Entry and Establishment), regional governments continue to supervise business actors to ensure they meet their commitments and impose sanctions for non-compliance through the OSS agency.

## D. Foreign Investment Promotion Strategy

**The Indonesian government does not have a specific foreign investment promotion strategy, but its investment strategy and targeted economic sectors can be inferred from the country's 20-year National Long Term Development Plan (*Rencana Pembangunan Jangka Panjang Nasional* or RPJPN) (2005-2025).** The RPJPN has been implemented through Law No. 17 of 2007, and is publicly accessible at the official website of the Ministry of National Development Planning/National Development Planning Agency. It is structured to be implemented in four stages, with each stage having a five-year plan called the National Medium Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional* RPJMN). The current five-year plan launched in January 2015, Third RPJMN of 2015-2019, contains the *Nawacita* development agenda (that is, nine priority programs) of President Joko Widodo's administration.

**In 2011, the Indonesian government further issued the Masterplan for Acceleration and Expansion of Indonesia's Economic Development (*Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia* "MP3EI").** The MP3EI forms an integral part of the National Long Term Development Plan 2005 – 2025 and its main objective is to enable Indonesia to become one of the 10 major world economies by 2025. It aims to boost Indonesia's economic growth and social development by targeted acceleration of the development of existing programs, promotion of certain targeted economic sectors, and increase in infrastructure and energy supply, as well as the development of human resources and science and technology in the country. It identifies eight primary programs and 22 primary activities as the focus of development. The eight primary programs are: agriculture, mining, energy, industrial, marine, tourism, telecommunications and the development of strategic regions of Indonesia. The 22 primary activities encouraged for large scale investment are: shipping, textiles, food and beverages, steel, defense equipment, palm oil, rubber, cocoa, animal husbandry, timber, oil and gas, nickel, copper, bauxite, fisheries, tourism, food and agriculture, the Jabodetabek area, the Sunda Straits strategic area, transportation equipment, and information and communication technology.

# 3. INVESTMENT ENTRY AND ESTABLISHMENT

## Market Entry and Sectoral Limitations

**Article 12(1) of Law No. 25 of 2007 on Capital Investment expressly permits investment in all business sectors of the economy, except in those sectors that are specifically closed or open subject to restrictions under Indonesian law.** More specifically, Article 12(2) states that foreign investment is prohibited in certain sectors such as weapons and war equipment and in sectors that are determined closed by law (Prohibited Sectors). Article 12(3) empowers the Indonesian government to determine the sectors closed to both domestic and foreign investment by way of Presidential Regulation based on criteria of health, morals, culture, environment, national defense and security, and other national interests. Similarly, Article 12(5) empowers the government to determine the business sectors open with restrictions based on national interest, also by way of Presidential Regulation (Restricted Sectors).

**On May 18, 2016, the Indonesian government enacted Presidential Regulation No. 44 of 2016 on the List of Business Activities Closed and Open to Investment (2016 Negative List), which revoked the Presidential Regulation No. 39 of 2014 with a prior list of business activities closed and open for investment.** The 2016 Negative List sets out the (i) Prohibited Sectors specifically reserved for the government where no private investment is permitted, whether domestic or foreign, (ii) Restricted Sectors in which investment is restricted via conditions or equity caps, and (iii) open business sectors permitting 100% investment subject to specified licensing and other requirements. It should be noted that there are ongoing discussions relating to revision of the 2016 Negative List.

**Foreign investors originating from ASEAN countries can avail themselves of higher foreign equity caps in certain business activities pursuant to the 2016 Negative List.** In addition, investment in some sectors can be subject to geographical restrictions. For instance, hospital business (under KBLI No. 86103) is open to a maximum of 67% foreign investment; however, foreign investors originating from ASEAN countries may hold up to 70% equity in companies engaging in hospital business, provided that the hospital is located in a capital city in the eastern Indonesian provinces (except for Makassar and Manado).

**Certain sector-specific laws may also impose prohibitions or restrictions on FDI in the relevant sector, or require the relevant regulator's approval.** For example, the regulation on e-money issued by Bank Indonesia (BI), Indonesia's central bank, in May 2018 introduced a restriction on foreign ownership in e-money companies. Apart from the Prohibited and Restricted Sectors, and sector-specific restrictions, the general position is that 100% foreign equity is permitted in a sector or sub-sector. The registration and licensing of FDI is centralized and integrated through the OSS implemented in July 2018.

## Prohibited and Restricted Sectors

**Table 3 lists some of the Prohibited and Restricted Sectors based on Law No. 25 of 2007 and the 2016 Negative List.** The 2016 Negative List contains a long list of business activities that are prohibited or restricted, organized by reference to the characterization of business activity described in the Indonesian Business Classification Codes (*Klasifikasi Baku Lapangan Usaha Indonesia* (KBLI). The KBLI numbers are used by BKPM to determine which foreign investment restrictions will apply to foreign investors under the 2016 Negative List.

The detailed list of the Prohibited and Restricted Sectors is provided online, here.

**Table 3. List of Major Prohibited and Restricted Sectors based on the 2016 Negative List and Law No. 25 of 2007**

| Prohibited Sectors | Scope |
|---|---|
| **Only Foreign Investment Prohibited** | |
| **Weapons** | Weapons, ammunition, explosives and war equipment |
| **Hunting** | Catching and propagating plants and wildlife from natural habitat |
| **Forestry** | Exploitation of timber forest products of natural forest; procurement and distribution of forest plant seeds; utilization of water environment services business in forest area |
| **Fishing** | Fish catching using fishing ships in Indonesian waters, territory and open sea |
| **Manufacturing** | Sea sand extraction |
| **Electricity** | Power plants <1 MW, construction and installation of low/medium voltage electric power utilization, electric power installation examination and testing on low/medium voltage electric power utilization |
| **Oil and Gas** | Onshore upstream oil and gas production installation; onshore pipeline installation, horizontal/vertical tank, onshore oil and gas storage and marketing installation, onshore oil and gas drilling services, well operations and maintenance services, design and engineering services, technical inspection services |
| **Medicine** | Traditional medicine processing, natural extract, raw material pharmaceutical wholesale business, pharmacy, drugstore, health equipment store and optician |
| **Wholesale and Retail Trade** | Commercial vehicle and spare parts retail business, supermarket with retail space extent less than 1200 M2, minimarkets with retail space extent of less than 400 M2, retail business in a number of areas such as jewelry, antiques, textile, games and toys, and others |
| **Logistics** | Public shipping |
| **Telecom** | Provider, operator and construction service provider for telecom tower |
| **Financial** | Non-bank foreign exchange trader, conventional and Sharia smallholder's credit bank |
| **Business Services** | Commission agent, property/real estate agent; survey of peoples opinion and market research (exception for ASEAN investors) |
| **Health Services** | Basic medical clinic services |
| **Media and Entertainment** | Publishing of newspaper, magazine, film promotion facility, advertisement, poster stills, billboards (exception for ASEAN investors) |
| **Both Domestic and Foreign Investment Prohibited** | |
| **Agriculture** | Cultivation of marijuana |
| **Fishing, Marine and Forestry** | Lifting of valuable artifacts from sunken cargo, utilization of coral from nature; catching certain listed fish species |
| **Beverages** | Alcoholic liquor, beverages, malt beverages |
| **Chemicals and Chemical Products** | Industrial chemical industry and ozone depleting substances; industry of certain chemicals listed as chemical weapons; pesticide active substances; alkaline chlorine production |
| **Culture and Education** | Public museums, historical and archeological remains |
| **Travel and Tourism** | Gambling/casino |
| **Logistics** | Provision of air navigation services |
| **Transportation** | Administration of motor vehicle testing, organization and operation of weigh stations, organization and operation of terminals for passenger land transport |
| **Telecom** | Management and operation of radio frequency spectrum and satellite orbit monitoring station; public broadcasting TV and radio |

| Restricted Sectors | Restrictions on Foreign Equity |
|---|---|
| **Agriculture** | Seeding/cultivation of staple crops in area more than 25 ha (up to 49%); plantation seeding in area of more than 25 ha (up to 95%); certain fruit and vegetable seeding (up to 30%); horticulture (up to 30%); R&D on genetically modified organisms (GMOs) (up to 49%) |
| **Forestry** | Hunting, wildlife plant breeding (up to 49%); nature tourism (up to 49% but 70% for ASEAN investors) |
| **Energy and Mineral Resources** | Oil and gas construction services platform (up to 75%), spherical tank (up to 49%); offshore pipeline installation (up to 49%); oil and gas geology surveying (up to 49%); geothermal surveying, drilling (up to 95%); geothermal operation and maintenance (up to 90%) |
| **Industrial** | Automobile maintenance and repair (up to 49%) |
| **Defense and Security** | Main or supporting component industry (up to 49%); security consulting (up to 49%); security guard provider (up to 49%); security education and training (up to 49%) |
| **Public Works** | Drinking water business (up to 95%) |
| **Whole and Retail Trade** | Department store with retail space extent of 400 M2—2000 M2 (up to 67%); warehousing (up to 67%) |
| **Tourism** | Museum management (up to 67%); management of historical and archeological remains (up to 67%); tourism travel bureau (up to 67%); catering (up to 67%); hotels up to three stars (★★★), motels, billiards, bowling, art galleries (up to 67%) |
| **Transportation** | Cargo land, passenger land, domestic sea, international sea, interprovincial inland water (up to 49%); airport transportation support services, airport activities, maritime cargo handling, freight (up to 67%); domestic and international scheduled commercial air transport (up to 49%) |
| **Communications and Telecom** | Telecom network services, content telecom services, call centers, ISP, data communication systems, public internet telephony (up to 67%); mail provider (up to 49%) |
| **Financial** | Investment finance company, venture capital (up to 85%); loss insurance, life insurance, reinsurance (up to 80%) |
| **Manpower** | Indonesian worker placemat service, worker/labor provider service (up to 49%); work training (up to 67%) |
| **Health** | Patent medicine (up to 85%); medical equipment testing (up to 67%); pest control (up to 67%); acupuncture (up to 49%); hospital, basic and special medical clinics (up to 67%); medical equipment supplier (up to 49%) |

Source: Analysis by Baker McKenzie based on country's laws and regulations.

Note: The table provides information on the 32 specific sectors identified for the purpose of this research[2]. The list of sectors is therefore not exhaustive.

**There is no general requirement to form a joint venture with a local partner to establish business in Indonesia, but in Restricted Sectors where less than 100% FDI is permitted, foreign investors are (by implication) required to form joint ventures with a local partner.** For example, because FDI in the automobile and repair industry is limited to 49% the only way a foreign company can set up operations in that industry within Indonesia is by establishing a joint venture with one or more local partners. A foreign investor may not bypass the foreign equity caps in the Restricted Sectors by mergers and acquisitions.

## Restrictions on Non-Equity Contract Based Investments

**Generally, no special restrictions or conditions are imposed on foreign investors relative to domestic investors as regards non-equity, contract-based investments such as franchising, outsourcing, licensing, and so forth.**

## Forms of Establishment

**Pursuant to Article 5 of the Law on Capital Investment, all foreign capital investment in Indonesia must be implemented through an Indonesian limited liability company domiciled in the country, often referred to as a Penanaman Modal Asing or "PMA company".** Foreign investors may freely invest, and generally hold any type of shares in a PMA company (for example, ordinary shares and preference shares). The BKPM requires domestic companies be converted into a PMA company if any shares of the domestic company are owned by foreign investors. Apart from the Restricted Sectors, there is no statutory prohibition against the establishment of a wholly foreign-owned PMA subsidiary in any other sector, provided the necessary regulatory approvals to carry on business activities in Indonesia have been obtained. Foreign investors are also allowed to set up a representative office in Indonesia, subject to regulatory approvals. Setting up of branch offices of foreign companies in Indonesia may be allowed only in certain fields, such as banking and certain energy projects.

## Minimum Investment and Paid-up Capital Requirements

**Foreign investors are subject to minimum investment as well as paid-up capital requirements.** In general, per Article 6 of the BKPM Regulation No. 6 of 2018, the minimum issued and paid-up capital for foreign investors is 2.5 billion rupiah (Rp), while the minimum investment value for foreign investors is more than Rp10 billion per line of business (excluding the investment in land and building). In other words, the total minimum investment threshold is Rp10 billion, with 25% of total investment to be injected as equity. The remaining balance may be injected as shareholder loan. For example, if a foreign investment company engages in 3 business lines, then it must have a minimum of Rp2.5 billion issued and paid-up capital and more than Rp 30 billion investment. This threshold must be fulfilled within 1 year after the date the foreign investor obtains a business license to establish commercial operations in the country.

**These requirements applicable to foreign investors may be superseded by minimum thresholds or other conditions in sector specific regulations.** For example, Article 8 of the Ministry of Transportation Regulation No. PM 49 of 2017 stipulates that a freight forwarder with a status of foreign investor must have minimum investment of US$4 million and minimum 25% of the authorized capital must be issued and paid-up. Similarly, in the banking sector, for commercial banks there is a minimum paid up capital requirement of Rp3 trillion.

## Quantitative Limits

**There are generally no mandatory quantitative limits on the number of foreign service providers, enterprises or market players that can operate in a given sector.**

## Restrictions on Expatriate Appointments

**In general, there is no specific restriction on foreigners being appointed as board members of local companies or in key managerial positions,**

**but foreigners are not permitted to handle any matters related to human resources.** Under the Ministry of Employment Decree No. 40 of 2012, foreigners are prohibited from holding positions that handle matters related to human resources, specifically the following positions:

- Personnel director
- Industrial relation manager
- Human resource manager
- Personnel development manager
- Personnel recruitment supervisor
- Personnel placement supervisor
- Employee career development supervisor
- Personnel declare administrator
- Chief executive officer
- Personnel and careers specialist
- Personnel specialist
- Career advisor
- Job advisor
- Job advisor and counselling
- Employee mediator
- Job training administrator
- Job interviewer
- Job analyst
- Occupational safety specialist

**The procedures for obtaining foreigners' work permits, including the timeline, are regulated under Ministry of Employment Regulation No. 10 of 2018 on Procedures of Utilization of Foreigner Workers (MOE Regulation No. 10).** Under MOE Regulation No. 10, the relevant government institution must approve Expatriate Manpower Utilization Plan (RPTKA) within 2 working days after the RPTKA application has fulfilled the requirements. Specifically, for any works pertaining to a national priority program, the relevant government institution must grant the approval of RPTKA within 1 working day after the RPTKA application has fulfilled the requirements. The relevant government institution must issue the notification to the employers within 2 working days after the information on the candidates is correctly provided. However, in practice, it may be take longer for the issuance of the above-mentioned documents.

**In general, there is no regulation expressly requiring foreign investors to hire local employees, but Article 10 of the Law on Capital Investment states that an investment business has an obligation to give priority to Indonesian manpower in meeting its hiring needs.** It also obligates an investment business to increase the competencies of Indonesian manpower through training in accordance with applicable laws.

## Local Sourcing Requirements and R&D Requirements

**The use of local content is required in some sectors (as an operational condition), but the requirement applies equally to both domestic and foreign investors.** For example, Article 22 (1) of Ministry of Trade Regulation No. 70/M-DAG/PER/12/2013 (as amended) stipulates that modern stores and shopping centres must provide trading goods that are locally manufactured of at least 80% of the total products sold.

There are no requirements to invest in local R&D in order to establish a business in the country.

## Foreign Investment Approval

**Pursuant to Article 5 of BKPM Regulation No. 6 of 2018, an approval is required in the form of a business license (izin usaha) to conduct commercial operations in the country.** It should be noted that domestic investors must also obtain this business license. In general, the business license approval will be given if the investment does not violate the 2016 Negative List and has fulfilled the minimum investment amount requirement and applicable sector-specific requirements.

**The Government of Indonesia has recently introduced an Online Single Submission (OSS) System.** Business licenses for most foreign investment companies were previously issued by BKPM. However, pursuant to the Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services (GR 24/2018), the OSS system consolidates most license applications

into one online system. The OSS system applies to all business entities and is intended to capture all sectors and to integrate all government agencies.

**The introduction of the OSS system signals a change in approach to registering a business.** Rather than the government checking compliance prior to licenses being issued, the OSS system assumes that companies will self-assess and ensure compliance. In case of non-compliance, per GR24/2018 a company's registration will be frozen, and dealings with the government and third parties will be delayed or will become more difficult until there is compliance. Currently, foreign investors are first required to establish a foreign investment company by obtaining the establishment approval from Ministry of Law and Human Rights and a Business Identity Number (NIB) from the OSS system. Thereafter, the foreign investment company needs to obtain its necessary business licenses and any applicable operational/commercial licenses from the OSS system or other relevant authorities, depending on the type of business.

**Under the OSS system, business licenses and operational/commercial licenses are issued with an obligation to fulfil certain commitments and obligations which may vary from one sector to another.** The business licenses and operational/commercial licenses will only be effective after all commitments and obligations imposed to enable the holders to conduct activities are fulfilled. These commitments may take the form of obtaining approvals or permits from the local government with jurisdiction over the project location.

**In general, a business license is currently issued without any expiration date.** As such, it is valid as long as the company is still conducting the relevant business, or as long as the business license has not been revoked. For a business license issued through the OSS system, the process is regulated under GR 24/2018 and its implementing regulations, and described in the Guidelines of Business Licensing Through Online Single Submission (OSS) for Businesses issued in July 2018 by the Coordinating Ministry for Economic Affairs. Business licenses for certain sectors such as electricity, downstream oil and gas, mineral and coal, public works and housing, and licenses to open a branch or representative office in the country are not yet administered by the OSS system.

# 4. INVESTMENT PROTECTION

## Protection Against Expropriation

**Investments in Indonesia, both domestic and foreign, are generally protected against expropriation under the Law on Capital Investment.** Article 7 of the Law on Capital Investment specifically prohibits the government to undertake any nationalization action or take over the ownership rights of domestic or foreign investors unless under legal provision. In the event that the government either nationalizes or takes over the ownership right of any investors, the government is required to pay compensation based on market value. If there is no consensus on the amount of compensation among the parties relative to the nationalized assets, then the dispute shall be settled through arbitration.

## Restrictions on Inflow and Outflow of Funds

**Article 8 of the Law on Capital Investment stipulates that an investor may freely transfer and repatriate in foreign currency its assets to parties appointed by the investor, in accordance with prevailing laws of the country.** The types of assets include the following:

- Capital
- Profits, bank interest, dividends and other income
- Additional funds which are required to finance capital investment
- Funds for repayment of loans
- Royalties or expenses
- Personal income of expatriates who work in capital investment companies
- Proceeds of sale or liquidation of the capital investment company
- Compensation for losses
- Compensation for takeover
- Payments for technical assistance and technical and management service fees, and payments under project contracts, and payments for intellectual property rights
- Proceeds from the sale of assets of capital investment companies

These repatriation rights do not infringe upon the government's ability to require reporting of repatriation activities and transfer of funds, receive tax and royalties and other government income from capital investment, nor do these rights provide protection from creditors. Article 9 of the Law empowers the Minister of Finance and courts to request the bank or other institution to delay transfer or repatriation until all liabilities of the investor are met.

**Indonesia currently permits the free transfer of funds subject to a number of reporting requirements that aim to prevent, among other things, money laundering.** In most cases, the bank executing the transfer of funds is responsible for reporting the transfer. Additionally, Bank Indonesia has introduced regulations requiring reports of transactions over a certain value.

**In general, all domestic transactions must be conducted using Indonesian currency (rupiah), with special exceptions granted to specific business sectors, purposes and areas as stipulated by Bank Indonesia (see further Box 2.).** This mandatory use of rupiah is not intended as a capital control because any person can freely hold, transfer or exchange foreign currency. The transfer of foreign exchange to and from abroad is, however, subject to disclosure and reporting obligations to Bank Indonesia.

## Box 2. Mandatory use of Rupiah for Domestic Transactions in Indonesia

**Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah Within the Territory of the Republic of Indonesia (PBI 17/2015) requires that a party (whether domestic or foreign) must use Rupiah for any transaction conducted within the territory of Indonesia.**

**Article 4 of PBI 17/2015 provides that the mandatory use of rupiah is not applicable for:**

- Certain transactions related to the implementation of the State budget
- Receipt or grant of offshore grants
- International commercial transactions
- Bank deposits in foreign currency
- Foreign (offshore) loan transactions
- Transactions in foreign currency conducted based on prevailing laws and regulations (such as any business in foreign currency conducted by banks
- Transactions in the primary and secondary market of securities issued by the government in foreign currency)

**Pursuant to PBI 17/2015, "international commercial transactions" include:**

- Any export and/or import of goods to or from outside the Indonesian customs area; and/or
- Cross border commercial transactions which include:
  - Cross-border supply (that is, supply of services from one country to another country. For example, online purchase or call centers); and
  - Consumption abroad (that is, services provided by service providers outside Indonesia to Indonesian citizens. For example, services for Indonesian citizens provided by foreign hospitals).

Any additional activities related to the export or import of goods to or from outside the Indonesian custom area are not categorized as "international commercial transactions" and are therefore subject to the mandatory use of rupiah. These activities include activities conducted using vessels, airplanes, or other transportation means.

**Additionally, under Bank Indonesia Regulation No. 18/18/PBI/2016 on Foreign Exchange to Rupiah Transaction between Banks and Domestic Parties, any conversion of Rupiah to a foreign currency in excess of specified thresholds requires an underlying transaction.** The specified thresholds are:

- For the purchase of foreign currency against rupiah, limited to US$25,000 per month per customer for spot transactions and US$100,000 per month per customer for derivative transactions;
- For the selling of foreign currency against Rupiah, limited to US$5 million per transaction per customer for a derivative transaction in the form of a forward and US$1 million per transaction per customer for an option transaction.

The "underlying transaction" referred to above must relate to one or more of the following activities:

- Domestic and international trade of goods and services,
- Investment in the forms of direct investment, portfolio investment, loans, capital and other investment inside and outside the Republic of Indonesia, or
- Granting of a bank loan or financing in foreign currency or rupiah for investment and trade activities.

The "underlying transaction" must not include:

- A placement of funds in banks in the form of, among others, savings account, demand deposit account, time deposit, or Negotiable Certificate Deposit,
- Money transfers by a remittance company,
- Granting of credit facility not yet withdrawn (for example, standby loan and undisbursed loan), or
- Use of Bank Indonesia Securities in foreign currency.

**Specific reporting requirements also apply to offshore loans.** Under the prevailing laws and regulations in Indonesia, a non-bank company acting as a borrower of an offshore loan is obliged to submit certain reports to: Bank Indonesia, the Ministry of Finance (MOF), and Offshore Commercial Loan Coordinating Team (PKLN Team) (see for example, Box 3.).

### Box 3. Reporting Requirements for Offshore Loans

**BI issued Regulation No. 16/21/PBI/2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations (Regulation 16/21).** Together with Regulation 16/21, BI also issued Bank Indonesia Circular Letter No. 16/24/DKEM of 2014 as last amended by Bank Indonesia Circular Letter 17/18/DKEM of 2015 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations which sets out the implementation of the Regulation 16/21 in more detail. Regulation 16/21 requires Indonesian non-bank companies that borrow offshore in foreign currency to fulfil three prudential criteria: (i) Hedging Ratio (ii) Liquidity Ratio (iii) Credit Rating.

**Under Regulation 16/21, there is no approval requirement.** Borrowers must submit a report (together with supporting documents) to BI about their compliance with the prudential requirements. BI will monitor the compliance and if BI finds that a borrower is not in compliance with the three prudential criteria, it will apply an administrative sanction in the form of a warning letter and monetary sanctions.

**Transfer of Foreign Currency must be from Bank Devisa.** BI Regulation No. 16/10/PBI/2014 on Receiving Foreign Currency From Export Revenue and Withdrawal of Offshore Loans (Regulation 16/10) requires that any foreign currency arising from (i) export revenue must be received through or (ii) offshore loans must be withdrawn from, a bank which is licensed by BI to do foreign exchange activities (Bank Devisa). Regulation 16/10 in conjunction with BI Circular Letter No. 18/5/DSta of 2016 on Receiving Offshore Loan Foreign Currency further emphasis that the offshore loans that are subject to this requirement are those arising from:

- Non revolving loan agreements that are not used for refinancing purposes;
- Any difference between the amount of a refinancing facility and the amount of the previous loan; and
- Debt securities in the form of bonds, medium term notes, floating rate notes, promissory notes and commercial paper.

**The withdrawal of the loan must be reported by the borrower to BI.** This report must be accompanied with a supporting document evidencing that the borrower has withdrawn the offshore loan from a Bank Devisa. This report must be filed with BI at the latest of the 15th day of the following month, which may be submitted together with the Monthly Report (as defined below). Also, the debtor must provide a written explanation and supporting documents to BI if there is any discrepancy of an equivalent amount of more than Rp50 million between the amount of loan disbursed and the total loan commitments.

These requirements do not apply to offshore loans given for the purpose of refinancing where the amount of the new loan is the same as the existing loan.

**Reports on Offshore Loans to BI:**

Based on Bank Indonesia Regulation No. 16/22/PBI/2014 on the Reports of Foreign Exchange Traffic Activities and the Prudential Principles Implementation Report in Managing Offshore Loan for Non-Bank Corporation (as amended) (Regulation 16/22) a company that incurs an offshore loan must report it to BI. The purpose of Regulation 16/22 is to mitigate all risks caused by offshore borrowing by Non-Bank Corporations to Indonesian Monetary system. Under Regulation 16/22, a company intending to obtain long term offshore loans (that is, a loan having a tenor of more than one year) is required to submit an offshore loan plan report to BI. The offshore loan plan must be submitted no later than the March 15 of the relevant year. Any amendments to the offshore loan plan must be submitted at the latest by July 1 of the relevant year. Furthermore, a company that receive offshore loan is also required to file an online monthly report on the realisation of the offshore loans with BI at the latest of the 15th day of the following month. No offshore loan plan is required for short term offshore loans.

In addition, the borrower must submit prudential principles implementation reports (PPIR) as follows:

- PPIR and quarterly financial report: at the latest three months after the reported quarter
- Attested PPIR and audited yearly financial report: by the end of June of the following year
- Credit rating report: by the end of the month following the month when the loan is entered into

**Reports on Offshore Loans to MOF:**

The obligation to submit a report to the MOF is based on Decree of Minister of Finance No. 261/MK/IV/5/1973 on Provisions on the Receiving of Offshore Loan, as amended by Decree of the Minister of Finance No. 417/KMK.013/1989 and further amended by Decree of the Minister of Finance No. 279/KMK.01/1991. The reporting obligation to the MOF only applies for:

- An offshore loan that has a term of more than 1 year after the date of signing
- An offshore loan that has a term of 1 year or less but is revolving in nature, making the offshore loan exceed the term of 1 year.

**Reports on offshore loan to PKLN Team:**

The offshore loans that must be reported to the PKLN Team include:

- Short-term offshore loans for trading purposes (for example, usance letters of credit (L/C), red-clause L/C, standby L/C) that are not used to fund and/or support projects that have correlation with the government or state-owned companies (including government banks/regional development banks);
- Offshore loans received by privately owned companies for the funding of projects that do not have a correlation with the government or state-owned companies in the form of government capital participation, guarantee for raw materials supply, guarantee for the purchase of products, or correlation in any other form; and
- Any other offshore loans determined by the PKLN Team (for example, offshore loans in the framework of money market such as money market line, term deposits for non-residents and commercial papers sold to non-residents, that are not related to the government's or state owned company's projects).

## Dispute Settlement

**Law on Capital Investment provides that if there is a dispute between the government and an investor that cannot be settled amicably, the dispute can be settled through arbitration, an alternative dispute settlement forum, or by the courts.** Consent for international arbitration is given on a case-by-case basis. As Indonesia is a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award 1958, foreign arbitration awards are enforceable in Indonesia. However, foreign court judgments are not enforceable under Indonesian law.

Administrative Law is provided under Law No. 30 of 2014 on Government Administration (Law No. 30), which requires that a government decision must be founded on provisions of a law, regulation and General Principle of Good Governance (GPGG) based on the following principles:

- Legal certainty
- Expediency
- Impartiality
- Accuracy
- No abuse of authority
- Openness

- Public interest
- Good services
- Other general principles to be determined, provided that the principle has been used as a basis for the judge's consideration in a legally binding court decision.

**Article 46 of Law No. 30 requires that if a government decision creates an imposition to a party, the authority will inform the relevant party with the legal basis, requirement, documents and relevant facts before implementing that decision.**

The authority also needs to inform the relevant party at least 10 working days before the enactment of the decision (except as regulated otherwise). Law No. 30 also provides an opportunity for a party to object to a government decision to the relevant government institution. If a party does not agree with the result of the objection, the party may make an appeal to the higher authority of the relevant government institution. Furthermore, a party may file a claim to the administrative court if they remain unsatisfied with the result of the appeal.

# 5. INVESTMENT INCENTIVES

**Under Article 18 of the Law on Capital Investment, the Indonesian government can grant fiscal incentives to investors who expand their business or undertake new capital investment, and fulfil at least one of the stipulated criteria.** These criteria include employing a number of workers, investing in high-priority areas or in infrastructure development, undertaking tech transfer, R&D or "pioneer industry" (with wide scale application and strategic value to Indonesia), locating in a remote or underdeveloped area, preserving environment, using domestic capital goods or machines or equipment, or making partnerships with micro, small or medium size enterprises or cooperatives.

**Article 18 further stipulates that fiscal incentives may be in the form provided in the list below, promulgated in a Regulation of the Minister of Finance:**

- Net income tax reduction up to certain level of investment made within certain period;
- Import duty exemption or reduction for imported capital goods, machinery, or equipment domestically unavailable;
- Import duty exemption or reduction for raw materials or supportive materials for production within certain period and meeting certain requirements;
- Value added tax (VAT) exemption or suspension for imported capital goods or machinery or equipment domestically unavailable for production within a certain period;
- Accelerated depreciation or amortization;
- Land and building tax reduction, especially for certain sectors or in certain regions.

Articles 21-24 further provide that the government may grant other non-tax benefits and facilitated services and/or licensing to investors, such as rights over land, immigration service facilities and import license facilities.

**The Ministry of Finance has promulgated a number of regulations granting tax incentives to give effect to the provisions of Articles 18-24 of the Law on Capital Investments.** The incentives are made available to both domestic and foreign investors. The main regulatory framework for tax incentives includes the following:

- Minister of Finance Regulation No. 150/PMK.010/2018 on Tax Holiday Facility;
- Government Regulation No. 18 of 2015 on Tax Facilities for Investments in Certain Business Sectors and/or Certain Areas as amended by Government Regulation No. 9 of 2016;
- Law No. 8 of 1983 on Value Added Tax and Sales Tax on Luxury Goods as amended by Law No. 42 of 2009;
- Government Regulation No. 81 of 2015 on Import and/or Delivery of Certain Strategic Taxable Goods that are Exempted from Value Added Tax;
- Law No. 10 of 1995 as amended by Law No. 17 of 2006 on Customs;
- Minister of Finance Regulation No. 176/PMK.011/2009 as last amended by Regulation No. 188/PMK.010/2015 on Exemption of Import Duty for Import of Machine, Goods and Materials for the Purpose of Industry Development or Expansion in the Framework of Capital Investment.

Some examples of tax incentives available under these regulations include tax holidays and corporate income tax reduction for qualifying investments in a pioneer industry, and VAT and custom duty exemptions if services or goods meet certain stipulated criteria. For an overview of pioneer industries, see Box 4.

**Box 4. Pioneer Industries under Minister of Finance Regulation No. Nomor 35/PMK.010/2018**

Minister of Finance Regulation No. Nomor 35/PMK.010/2018 lists the following as "pioneer industries" having broad and strategic relevance to the country's economy:

- Integrated upstream base metal industry
- Integrated oil and gas refinery industry
- Integrated oil, gas and coal-based petrochemical industry
- Integrated inorganic chemical based industry
- Integrated organic chemical based industry
- Integrated pharmaceutical raw materials industry
- Semiconductor and primary computer component industry that is integrated with computer manufacturing industry
- Main component of communication tools industry that is integrated with smartphone manufacturing industry
- Main component of health equipment industry that is integrated with irradiation, electromedical or electrotherapy manufacturing industry
- Main component of industrial machinery industry that is integrated with machinery manufacturing industry
- Main component of machinery manufacturing industry that is integrated with motor vehicles manufacturing industry
- Robotic components industry that is integrated with manufacturing industry
- Main component of ship industry that is integrated with ship manufacturing industry
- Main component of aircraft industry that is integrated with aircraft manufacturing industry
- Main component of train industry that is integrated with train manufacturing industry
- Power plant engine manufacturing industry
- Economic infrastructure
- Digital economy, namely data processing, hosting and associated activities

**For certain services activities an incentive is provided in the form of a 0% VAT rate.** Export of taxable services is subject to VAT. However, Minister of Finance Regulation No. 32/PMK.010/2019 on Limitation of Activities and Type of Taxable Services that Export are Subject to Value Added Tax (MoF Regulation 32) stipulates that the following activities would be subject to a 0% VAT rate if certain requirements are met:

1. Activities related to export of movable goods to be used outside of the customs area;
2. Activities related to immovable goods located outside of the customs area;
3. Activities other than those stated in point 1 and 2, above, whose results are used outside of the customs area, by the following means:
   - i delivered directly or indirectly, among others by means of mail and electronic means;
   - ii provision of access to be used outside of the customs area.

The requirements to qualify for 0% VAT are that: (i) the service is based on a written agreement that clearly states the type of the taxable service, gives details on the activities performed in the customs area to be exported, and the value of the delivery,

and (ii) that there is payment made by the service recipient to the exporter, supported by a valid proof of payment. Business activities carried out mainly for export may also enjoy Bonded Zone facilities and the imported goods may be exempted from customs duty, excise and import taxes. Companies having a Bonded Zone license may sell a maximum of 50% — for domestic consumption — of the previous year's export realization value and/or sales value to other Bonded Zone areas.

**For both domestic and foreign investment companies there are several regulations that aim to provide financial incentives, for example, reducing production costs by cutting the price of gas and electricity for certain industries.** For instance, in the natural gas sector President Regulation No. 40 of 2016 on the Determination of Natural Gas Prices for Certain Industry and Regulation of Minister of Energy and Natural Resources No. 16 of 2016 on the Guidelines for the Determination of Certain Prices and User of Natural Gas allows certain industries using natural gas (for example, steel, ceramics, petrochemical, and so forth) to purchase natural gas at favorable prices. This incentive is subject to, among others, obtaining a recommendation from the Minister of Industry. Similarly, in the electricity sector, Regulation of Minister of Energy and Natural Resources No. 28 of 2016 on Electricity Tariff provided by PT Perusahaan Listrik Negara (Persero) regulates specific tariffs for Industry and for certain special economic zone in Indonesia.

**Law No. 39 of 2009 on Special Economic Zones provides incentive for companies that are located in Special Economic Zones.** For example, a plot of land may be obtained through a land acquisition for public interest scheme funded by the state or the regional government budget.

**There is a centralized database of tax incentives offered to investors in Indonesia, available at the official website of BKPM (accessible here).** In addition, the Indonesian government lists all tax regulations on the official website of the Director General of Tax, accessible here. However, there is no centralized database of financial incentives available for investors.

## Eligibility Criteria and Approval Process

**The granting of tax/financial incentives to investors is contingent upon satisfying certain criteria.** If the incentive is provided in a published law/regulation, the eligibility criteria are often laid out in the same law /regulation. The approval process for receiving tax/financial incentives is not automatic. Applicants are required to apply for the incentives through the OSS system prior to commencing commercial operations in the country and the OSS system will notify the investor if the stipulated criteria are met for the incentives. After the investor receives notification that the requirements are fulfilled, the investor must submit the supporting documents through the OSS system. The incentives are granted by the Director General of Tax on behalf of the Minister of Finance in consultation with the BKPM and the ministry in charge of the sector in which the investment is contemplated.

## 6. INVESTMENT LINKAGES

**For the purpose of this section research was focused on availability of incentive schemes to increase local sourcing, technology transfer and measures to improve information exchange between foreign investors and domestic suppliers.** Several incentives aim at creating linkages between domestic companies and foreign investors. Article 18(3) of the Law on Capital Investment states that the government may grant incentives to investors if capital investment undertakes technology transfer or if it is in an industry that uses domestic capital goods or machines or equipment. Under Regulation No. 18 of 2015 on Tax Facilities for Investments in Certain Business Sectors and/or Certain Areas (as amended by Government Regulation No. 9 of 2016), certain tax incentives are available to investors (whether domestic or foreign) for capital investment that has high local content or high absorption of Indonesian manpower. Additionally, some sector specific regulations may require investors to use local content (for example, telecommunication, electricity, mining, oil and gas) or to transfer their technology to their local partner (for example, electricity sector).

## 7. OUTWARD FOREIGN DIRECT INVESTMENT

**For this section, research was focused on whether there are any legal instruments specifically covering outward investment and if there are, whether they impose any restrictions on outward investment.** Indonesia does not have an omnibus legislation to regulate Outward Foreign Direct Investment (OFDI) by Indonesian investors overseas. The BKPM is charged with coordinating the investment activities conducted outside Indonesia by local investors. Certain restrictions apply relative to the conversion of the rupiah into foreign currency, as described in Section 4 (Investment Protection).

## 8. RESPONSIBLE INVESTMENT

**For this section, research was focused on whether there are any measures within the country's investment legislation that are specifically targeted to ensure responsible investment.** Indonesia has undertaken several measures in the country's investment policy and legal framework to promote responsible investment. None of these measures specifically target foreign investors or foreign investment, and are equally applied to domestic investors. In addition, there are other laws that apply to foreign investors as well, which may serve to preserve the environment and to ensure products produced comply with national and international standards. Notably, Indonesia has undertaken the following measures:

- **Under Law on Capital Investment, an investor has the obligation to implement corporate social responsibility.** This obligation includes, among others, imperatives (i) to keep the environment sustainable; (ii) to create workers' safety, health, amenity, and welfare; and (iii) for investors engaged in a nonrenewable natural resource business to allocate funds for location recovery.

- **The requirement to preserve the environment is also contained in specific regulations concerning forestry, and natural gas and oil.** For example, Law No. 22 of 2011 on Natural Oil and Gas requires a business entity to prevent and restore any environmental damage, including imposing a post-mining operation obligation. Similarly, under the Government Regulation No. 45 of 2004 on Forest Protection a holder of a forest utilization permit is required to protect the forest, among other things, by (i) preventing its disruption by other parties, (ii) preventing, extinguishing and post-wildfire handling, (iii) provisioning personnel and utilities for the protection of the forest, (iv) maintaining water sources, and (v) cooperating with other holders of forest utilization permits, and the citizenry.

- **BKPM Regulation No. 7 of 2018 on Guidelines and Procedures for Maintenance of the Implementation of Capital Investment (BKPM Reg. 7) further requires every investor to be responsible for maintaining environmental sustainability and ties non-compliance to concrete sanctions.** Under BKPM Reg No. 7, a company that causes environmental damage or harms public safety may be subject to an administrative sanction in the form of suspension and revocation of the investment license, among other sanctions.

- **Under the Indonesian Company Law, companies that manage or utilize natural resources or conduct activities that may have an impact on natural resources must fulfil all relevant social and environmental responsibilities.** The Company Law also requires inclusion of social and environmental responsibility funds in company budgets for all limited liability company, whether domestic or foreign.

- **Concerning labor conditions, under Law No. 24 of 2011 on Social Security Organizing Body, each person (including foreigners working in Indonesia for at least 6 months) must be enrolled in the social security programs that are administered by the relevant social security organizing body (*Badan Penyelenggara Jaminan Sosial* (BPJS).** An employer has the obligation to enroll its employees into the social security programs. Even a definite period employee is required to be enrolled into the social security programs.

- **Law No. 20 of 2014 on Standardization and Conformity Assessment imposes general requirements for compliance of a product with national standards.** The regulation requires certain products to obtain a Standard Nasional Indonesia (SNI) mark, that is, a sign the product meets the Indonesian National Standard. SNI mark approval is administered by the Indonesian National Bureau of Standards (Badan Standardisasi Nasional or BSN). BSN lists certain products that are subject to testing pursuant to standards issued by the BSN. Based on the relevant institution or ministry, there are two types of SNI (depending on the goods): (i) mandatory SNI and (ii) voluntary SNI. Goods that are subject to mandatory SNI should have SNI mark approval before the goods can be used or traded in Indonesia. The technical SNI mark approval process will depend on the relevant institution or ministry that oversees the goods.

# 9. RECENT POLICIES ON NEW TECHNOLOGIES

**This section considers Indonesia's recent policy measures on new technologies (that may affect both domestic and foreign investors).** Globally, policy measures on new technologies tend to focus on the enabling (sectoral) regulatory framework, as well as on incentives, digital standards, and clusters. At the same time, countries have taken measures that highlight their changing approaches to national security. Other emerging policies that, though not directly related to investment, as a matter of fact impact investments, are data localization requirements as well as rules and regulations concerning the treatment and use of digital data.

**Indonesia has passed new legislation on data protection.** It has a patchwork of laws and regulations that address the use of an individual's private or personal information through electronic media, the most recent being the Minister of Communication and Informatics Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems, which was enacted on December 1, 2016. Under this Regulation, personal data (for example, name and date of birth) can only be "used" (which is widely interpreted to include acquiring, collecting, processing, analyzing, storing, transferring and deleting) after express and opt-in consent is obtained from the relevant data subject. The consent can be obtained either manually or electronically, and in the Indonesian language (although there is no prohibition of a dual language format). Further, the "use" of personal data is limited for specific purposes set out in the collection form.

## Data Localization

**Indonesia has recently reduced data localization requirements by enacting Government Regulation No. 71 of 2019 on the Implementation of Electronic Systems and Transactions, effective on 10 October 2019 (GR 71).** GR71 revokes the Government Regulation No. 82 of 2012 on the Implementation of Electronic Systems and Transactions (GR 82). On October 15, 2012, Indonesia had enacted data localization requirements through GR 82 in response to the concern over the transfer of data from Indonesia offshore. GR 82 provided for a transitional provision of five years for existing electronic system operators to comply with the regulations. Under GR 82, electronic system operators that provide public services were required by October 2017 to have data centers and disaster recovery centers in Indonesia as part of a business continuity plan. These data localization requirements were replicated in the Ministry of Communication and Informatics Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems, under which Electronic System Operators that provide "public services" must have a data center and disaster recovery center in Indonesia. However, there was no definition of public services under GR 82 or the Personal Data Protection Regulation.

**GR 71 dispenses with the concept of "public services", and only mandates public electronic system operators to place electronic systems and data in Indonesia.** Even with the five-year transitional period for GR 82, electronic systems operators had difficulties fulfilling the data localization requirements. Multinational companies tend to have global data center arrangements with their offshore group entities. Under GR 71, Private Electronic System Operators can place their electronic systems and data in or outside of Indonesia, unless otherwise regulated. However, Private Electronic System Operators must allow "supervision" by government agencies, including granting access to the electronic systems and data for monitoring and law enforcement purposes (all of which will be subject to further implementing regulations). In addition, GR 71 stipulates that institutions that are deemed to have "strategic electronic data", which include those in, for example, finance, health care, defense and other sectors, must connect electronic documents and electronic backup records to a certain data center in the event of an incident that must be reported to the cyber security authority. Institutions are not defined, so they may include private companies, and there is also no definition for "certain data center", so further clarification is required.

# 10. CITY SPECIFIC REVIEW — JAKARTA

**Special Capital Region of Jakarta (Daerah Khusus Ibukota Jakarta or DKI Jakarta) is the capital city of Indonesia, and one of the main destinations for foreign investment in Indonesia.** The BKPM report for investment value per province in Indonesia for the year 2018 ranks DKI Jakarta as the province with the second biggest investment value (behind only West Java). As the capital city of Indonesia, DKI Jakarta is home to the Government and Ministries' offices, the National Stock Exchange, Bank Indonesia, BKPM's head office and the OSS office (now integrated into BKPM). Additionally, most of the major corporations' and financial institutions' headquarters are in DKI Jakarta. This provides better access to foreign investors in DKI Jakarta in terms of coordinating with the relevant government authority regarding the issuance of the licenses or permits that are required for their business activities.

**Indonesia recognizes regional autonomy and there is wide law-making authority at the regional levels.** Law No. 23 of 2014 on Regional Government stipulates that a law that is enacted at the sub-national level should not conflict with any regulation at a higher (that is, national) level. Thus, for example the regulations issued by the regional government of DKI Jakarta commonly supplement or act as the implementing regulations of the regulations at the national level. Yet regional governments, like the Jakarta regional government can create cumbersome local regulations that hamper the local business climate. For example, additional local content requirements or lengthy procedures to obtain certain licenses that may be time consuming (for example, lengthy procedures to obtain a license to construct or additional reporting requirement of employment welfare) may be imposed.

**The Central Government sought to limit such local requirements by annulling problematic bylaws issued by local governments, under a special authority granted under Law No. 23 of 2014. However, the Constitutional Court of Indonesia ruled that authority to be unconstitutional.** Law No. 23 of 2014 empowers (i) the Governor (head of province), as representative of the Central Government, to annul legislation issued by the Regency/City Government (Regency/City Regulation) and (ii) the Ministry of Home Affairs (MoHA) to annul legislation issued by Provincial Government (Provincial Government Regulation) that would be contrary to the provisions of more authoritative laws and regulations, or contrary to the public order or decency. However, decisions of the Constitutional Court (No. 137/PUU-XIII/2015; No. 56/PUU-XIV/2016) deemed MoHA and the Governor's authority to be unconstitutional. As a result, the Supreme Court remains the only avenue available to review problematic regulations issued by a province, regency or city. Additionally, under Regulation No. 1 of 2011 on judicial review at the Supreme Court, the public is not allowed to make oral submissions and the process is solely based on document review.

**Furthermore, local regulations are often not easily accessible.** There is no single repository of local regulations available in Indonesia. Each local government organizes its own database of regulations. It is usually available under the JDIH platform of that region. For example, Jakarta's JDIH platform is available here. However, the local regulation databases are typically not user-friendly, nor always up to date and complete.

# 11. COMPETITION LAW & POLICY

**For the purposes of this section research was focused on merger control and leniency frameworks in the country.**

**The primary law governing competition in Indonesia is Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Competition, which came into force on 5 March 2000.**

The Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha*) (Competition Authority or CA), established in 2000, is the main body responsible for implementing competition law and policy in the country.

## A. Merger Control

**Indonesia's merger control regime is provided in a number of legal instruments (collectively, the Merger Control Framework):**

- Articles 28 and 29 of the Law No. 5 of 1999 on Prohibition of Monopoly and Unfair Business Competition Practices;
- Regulation No.3 of 2019 on the Assessment of Mergers, Consolidations or Share Acquisitions which may lead to Monopolistic Practices or Unfair Business Competition (the 2019 Regulation);
- Government Regulation No. 57 of 2010 on Mergers, Consolidations and Acquisitions of Shares that May Result in Monopoly or Unfair Business Competition Practices; and
- Regulation No. 04 of 2012 on Guidelines for the Imposition of Fines for Delay for Notifying Mergers, Consolidations and Acquisitions.

**The Competition Authority is the primary enforcement authority established for the enforcement of the Merger Control Framework in the country.** It should be noted, however, that there may be other filing obligations in certain sectors, such as banking and finance, and oil and gas (upstream), and for foreign investment in general.

**Pursuant to the Merger Control Framework, mergers, consolidations and acquisitions (as defined in Article 1 of Law No. 5) that result in combined assets, sales (or both) exceeding the following prescribed thresholds must be notified to the CA:**

- For a non-banking sector, if the asset value of the merged entity exceeds Rp2.5 trillion or the turnover of the merged entity exceeds Rp5 trillion; or
- For the banking sector, if the combined asset value of the merged entity exceeds Rp20 trillion

The asset value is determined based on the calculation of assets located in Indonesia and the turnover value is determined based on the turnover from Indonesia.

**A merger, consolidation or acquisition is deemed to have occurred when there is a change of control.** The term "control" is defined as: (i) voting rights above 50%; or (ii) voting rights equal to or less than 50%, that include the ability to influence or determine the management policies or the management of a business entity.

**Indonesia has adopted a mandatory post-merger notification regime, although there is also a voluntary pre-merger procedure available.** Voluntary pre-closing notification (referred to as "consultation") is available using the same form and requiring the same level of detail as the mandatory post-closing notification process. The consultation process results in the CA issuing an opinion to which the CA is committed following subsequent submission of the mandatory post-closing notification, unless there is a material change to the competitive conditions in the market and so long as the gap between the issued opinion and submission of the mandatory post-closing notification is no more than two years. The consultation process therefore does not negate the obligation of a mandatory post-merger notification filing. However, there will not

be another assessment of the merger in question so long as there is no material change. Mandatory post-merger notification must be made no later than 30 days after the transaction completes. The forms of notification are available at the CA's website, but available only in the local language.

## Two-Phase Procedure, Review Period and Information Requests

**There is no fast track procedure available in Indonesia for review of mergers by the CA, although the 2019 Regulation appears to provide for a two-phase review process.** The formal review process is split into an "initial assessment" and a "comprehensive assessment". If no competition concerns arise during the initial assessment period, a decision to that effect will be adopted. However, the 2019 Regulation does not state the maximum period for this first review. Only if material competition concerns arise will the CA conduct a comprehensive assessment that will be conducted by an "assessment commission". The formal substantive review period expires 90 working days after the full formal notification is declared complete. Although there is no limitation on the number of times the CA may request information during its review, the 2019 Regulation provides that clarification and review of supporting documents and the notification will be conducted by the CA in 60 days or fewer. However, in practice, additional information requests may be made after the formal review stage has been initiated.

## Remedies

**If the CA determines that a merger, consolidation or acquisition causes a negative impact on competition and remedies are required, the CA will issue a Conditional Approval setting out the behavioural or structural remedies it requires to alleviate competition concerns.** The filing party has 14 working days from receipt of the Conditional Approval to agree to these remedies. If the proposed remedy is accepted by the filing party, the CA will issue an opinion approving the transaction subject to the remedy. If the merging party fails to respond to or fulfil the remedy, the CA will conduct an investigation into the existence of anticompetitive or monopolistic conduct resulting from the transaction. In practice, the remedies agreed by the CA to date are limited to behavioural remedies, such as reporting sales and market shares. To date, there is no precedent of a structural remedy having been required by the CA.

## File Access and Third Party Intervention

**Third parties do not have the right to access the CA merger notification files.** The notice on the CA's website contains the names of the parties, the date a notification was submitted, and the status of the submission. Apart from the CA's opinion, which is subject to the filing party's redaction, no other information is open to public.

**Third parties can submit non-solicited information formally or informally to the CA regarding a transaction and can request to be interviewed by the CA during the formal review phase.** However, the CA has the right to make the final decision on whether the interview takes place.

## Substantive Assessment

**The substantive assessment includes the review of typical effects on competition, including market concentration, barriers to entry, unilateral and coordinated effects, and whether there are efficiency gains or a failing firm defence.** Additional factors may be analysed including the protection of micro, small and medium enterprises, impact on workforce and regulatory requirements.

## Penalties and Appeals

**Statutory penalties are imposed for failure to submit notification in a timely manner, in the amount of up to Rp1 billion per day of delay with a maximum penalty of Rp25 billion.** If remedies are not implemented, the CA may initiate an investigation, which may eventually lead to administrative penalties for the violation of the law (for example, abuse of dominance) including fines of up to Rp25 billion per violation found and/or undoing the transaction. There is no separate violation for failure to implement a remedy.

The CA's decisions arising from an investigation may be appealed to a district court, with final appeal to the Supreme Court (on application of law, not assessment of facts).

### Publicity and Deadlines for Merger Decisions

**A short description of the notification decisions is published on the CA's website, which includes the CA's analysis subject to redactions and corrections requested by the filing party.** Typically, the reasoning of the CA is included in the published decision but the values of the data (for example, market share percentage, revenue amount and other similar confidential information) are redacted.

## B. Leniency Program

**The current legislation covering anti-monopolistic practices in Indonesia does not recognize leniency.** A draft revision to the law includes a proposal to have a leniency program in place in the future, in order to encourage cartelists to come forward voluntarily and report their activities to the CA. In the past, many cartel-related decisions reached by the CA were overturned in the courts due to a lack of direct evidence. It is believed that by introducing a leniency program, more cartelists will provide first-hand evidence and assist the CA with its investigations.

# ENDNOTES

[1] The WTO services sectoral classification list (W/120) is a comprehensive list of services sectors and sub-sectors covered under the GATS. It was compiled by the WTO in July 1991 and its purpose was to facilitate the Uruguay Round negotiations, ensuring cross-country comparability and consistency of the commitments undertaken. The 160 sub-sectors are defined as aggregate of the more detailed categories contained in the United Nations provisional Central Product Clas). The list can be accessed under the following link: http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc.

Services are categorized into 12 sectors:

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services

12 Other services not included elsewhere

[2] For the purpose of this research, 32 sectors have been identified. This is not an exhaustive list of all sectors of the economy.

| | |
|---|---|
| **Primary:**<br>1. Agriculture, Hunting, Forestry, and Fishing<br>2. Mining, Quarrying, and Petroleum | **Services:**<br>18. Electricity, Gas, and Water<br>19. Alternative Energy<br>20. Construction<br>21. Wholesale and Retail Trade<br>22. Hotels and Restaurants<br>23. Other Travel and Tourism-related Services<br>24. Logistics, Transport, and Storage<br>25. Telecommunications<br>26. Computer and Software Services<br>27. Financial Services including Insurance<br>28. Real Estate<br>29. Business Services<br>30. Professional, Scientific and Technical Services (Engineering, Architecture, and so on)<br>31. Health Services<br>32. Media and Entertainment |
| **Manufacturing:**<br>3. Agroprocessing, Food Products, and Beverages<br>4. Textiles, Apparel, and Leather<br>5. Chemicals and Chemical Products<br>6. Rubber<br>7. Plastic Products<br>8. Pharmaceuticals, Biotechnology, and Medical Devices<br>9. Metals and metal products<br>10. Non-metal mineral products<br>11. Wood and wood products (other than Furniture)<br>12. Furniture<br>13. Paper and paper products<br>14. Printing and publishing<br>15. Automobiles, Other Motor Vehicles, and Transport Equipment<br>16. Information Technology and Telecommunications Equipment<br>17. Machinery and Electrical and Electronic Equipment and Components | |

# LIST OF REFERENCE MATERIALS

## Primary Sources


1. Law No. 25 of 2007 on Capital Investment
2. Law No. 40 of 2007 on Limited Liability Companies
3. Law No. 12 of 2011 on Formation of Laws and Regulations
4. Law No. 3 of 2014 on Industry
5. Government Regulation No. 142 of 2015 on Industry Zone
6. President Regulation No. 44 of 2016 on List of Business Activities Closed and Open with Requirements for Foreign Investment
7. President Regulation No. 90 of 2007 on Investment Coordinating Board (as amended by President Regulation No. 86 of 2012)
8. President Regulation No. 33 of 2012 on National Documentation Network and Legal Information
9. Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services
10. Investment Coordinating Board Regulation No. 6 of 2018 on Guidelines and Procedures for Capital Investment Licensing and Facilities
11. Ministry of Employment Regulation No. 10 of 2018 on Procedures of Utilization of Foreign Workers
12. Ministry of Employment Decree No. 40 of 2012 on Certain Positions that are Prohibited to be held by Foreign Workers
13. Law No. 30 of 2014 on Government Administration
14. Law No. 39 of 1999 on Human Rights
15. Law No. 40 of 2008 on the Eradication of Race and Ethnical Discrimination
16. Law No. 13 of 2003 on Labor
17. Law No. 19 of 2013 on State Owned Enterprises
18. Law No. 24 of 2011 on Social Security Organizing Body
19. Law No. 20 of 2014 on Standardization and Conformity Assessment
20. Law No. 23 of 2014 on Regional Government
21. Law No. 11 of 2008 as amended by Law No. 19 of 2016 on Electronic Information and Transactions
22. Government Regulation No. 82 of 2012 on the Implementation of Electronic Systems and Transactions
23. Government Regulation No. 10 of 2011 on the Guidelines for the Provision of Foreign Indebtedness and Aid
24. Minister of Communication and Informatics Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems
25. Investment Coordinating Board Regulation No. 7 of 2018 on Guidelines and Procedures for Maintenance of the Implementation of Capital Investment
26. Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah Within the Territory of the Republic of Indonesia
27. Bank Indonesia Regulation No. 18/18/PBI/2016 on Foreign Exchange to Rupiah Transaction between Banks and Domestic Parties
28. Bank Indonesia Regulation No. 16/21/PBI/2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations

29. Bank Indonesia Circular Letter No. 16/24/DKEM of 2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations

30. Bank Indonesia Circular Letter 17/18/DKEM of 2015 on amendment of Bank Indonesia Circular Letter No. 16/24/DKEM of 2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations

31. Bank Indonesia Regulation No. 16/10/PBI/2014 on Receiving Foreign Currency From Export Revenue and Withdrawal of Offshore Loan

32. Bank Indonesia Circular Letter No. 18/5/DSta of 2016 on Receiving Offshore Loan Foreign Currency

33. Bank Indonesia Regulation No. 16/22/PBI/2014 on the Reports of Foreign Exchange Traffic Activities and the Prudential Principles Implementation Report in Managing Offshore Loan for Non-Bank Corporation

34. Decree of the Minister of Finance No. 261/MK/IV/5/1973 on Provisions on the Receiving of Offshore Loan (as amended by Decree of the Minister of Finance No. 417/KMK.013/1989 and Decree of the Minister of Finance No. 279/KMK.01/1991)

35. ILO Convention No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value (by virtue of Law No. 80 of 1957)

36. ILO Convention on the Elimination of All Forms of Discrimination against Women (by virtue of Law No. 7 of 1984)

37. ILO Convention No. 111 on Discrimination in respect of Employment and Occupation (by virtue of Law No. 21 of 1999)

38. Law No. 8 of 1983 on Value Added Tax and Sales Tax on Luxury Goods as lastly amended by Law No. 42 of 2009

39. Law No. 10 of 1995 as lastly amended by Law No. 17 of 2006 on Customs

40. Government Regulation No. 18 of 2015 on Tax Facilities for Investments in Certain Business Sectors and/or Certain Areas as amended by Government Regulation No. 9 of 2016

41. Government Regulation No. 81 of 2015 on Import and/or Delivery of Certain Strategic Taxable Goods that are Exempted from Value Added Tax

42. Minister of Finance Regulation No. 150/PMK.010/2018 on Tax Holiday Facility

43. Minister of Finance Regulation No. 176/PMK.011/2009 as amended by Regulation No. 188/PMK.010/2015 on Exemption of Import Duty for Import of Machine, Goods and Materials for the Purpose of Industry Development or Expansion in the Framework of Capital Investment

44. Regulation No.3 of 2019 on the Assessment of Mergers, Consolidations or Share Acquisitions which may lead to Monopolistic Practices or Unfair Business Competition

45. Regulation No. 04 of 2012 on Guidelines for the Imposition of Fines for Delay for Notifying Mergers, Consolidations and Acquisitions

46. Government Regulation No. 57 of 2010 on Mergers, Consolidations and Acquisitions of Shares that May Result in Monopoly or Unfair Business Competition Practices

47. General Agreement on Trade in Services (GATS)

48. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

49. Agreement on Trade-Related Investment Measures (TRIMs)

50. Agreement on Subsidies and Countervailing Measures (SCM)

51. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)

52. International Centre for Settlement of

Investment Disputes (ICSID) Convention)

53. Articles of Agreement of the International Monetary Fund

54. ASEAN Comprehensive Investment Agreement (2012)

55. Indonesia—Qatar BIT (2018)

56. ASEAN-China Investment Agreement (2010)

## Secondary Sources

57. Frequently Asked Question on Investment issued by Investment Coordinating Board

58. FDI Realization based on sector for the period of January to December 2018 issued by Investment Coordinating Board

59. FDI Realization based on location for the period of January to December 2018 issued by Investment Coordinating Board

60. UNCTAD Investment Policy Hub (https://investmentpolicy.unctad.org/international-investment-agreements)

61. I-TIP Services database (https://i-tip.wto.org/services/default.aspx)

62. Double Taxation Avoidance Agreements (https://iclg.com/practice-areas/corporate-tax-laws-and-regulations/indonesia)

This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment and competition that affect businesses and foreign investor. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **May 31, 2019**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries: Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

WORLD BANK GROUP

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