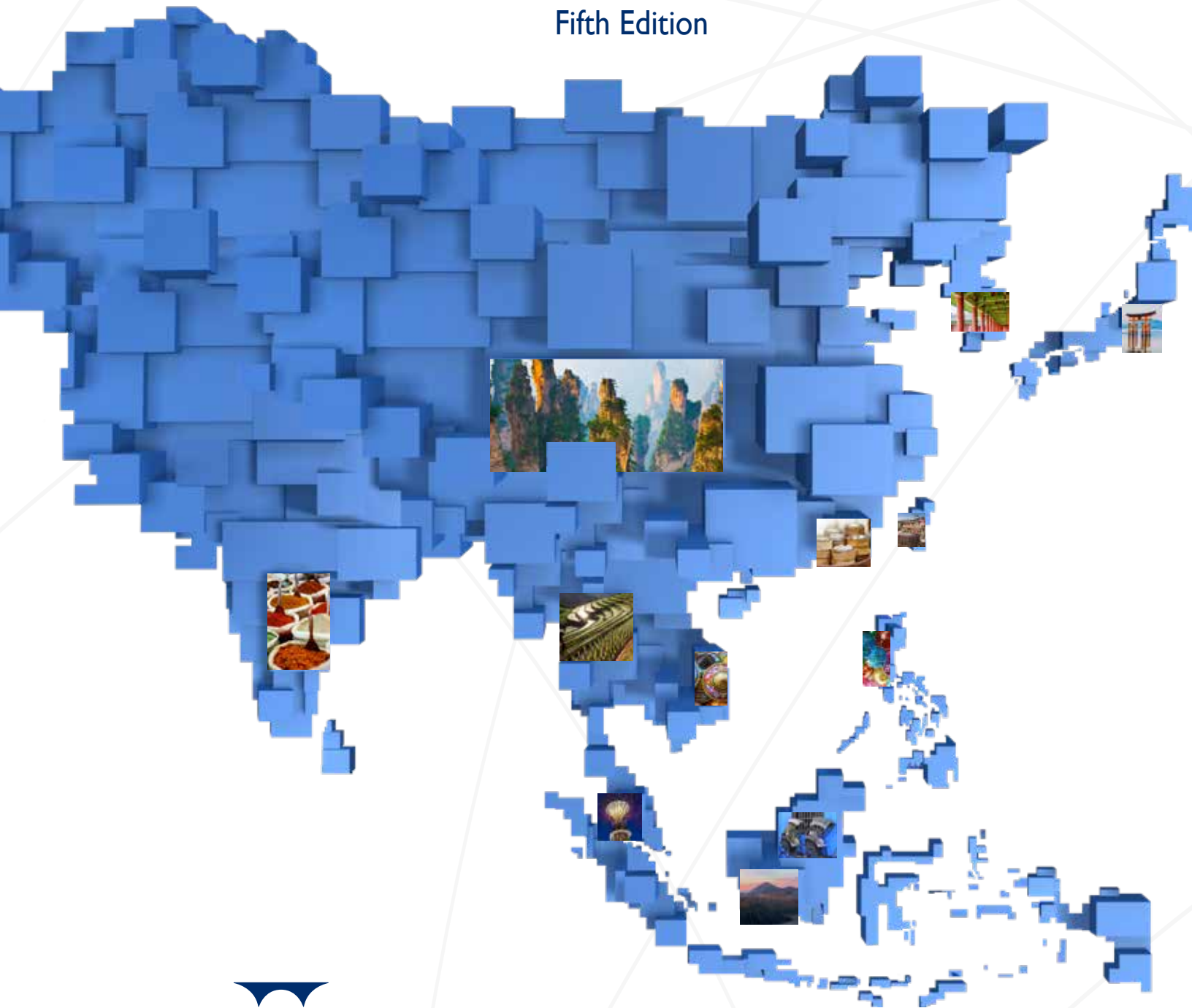


ASIA

A Legal Guide for Business
Investment and Expansion

Fifth Edition



MERITAS[®]

LAW FIRMS WORLDWIDE

ABOUT MERITAS

Founded in 1990, Meritas is the **premiere global alliance of independent law firms** working collaboratively to provide businesses with qualified legal expertise. Our market-leading member firms offer a **full range of high-quality, specialized legal services**, allowing you to confidently conduct business anywhere in the world.

As an invitation-only alliance, **Meritas firms must adhere to our uncompromising service standards** to retain membership status. Unlike any other network or law firm, Meritas collects peer-driven reviews for each referral, and has for more than 25 years.



7,500+
EXPERIENCED
LAWYERS

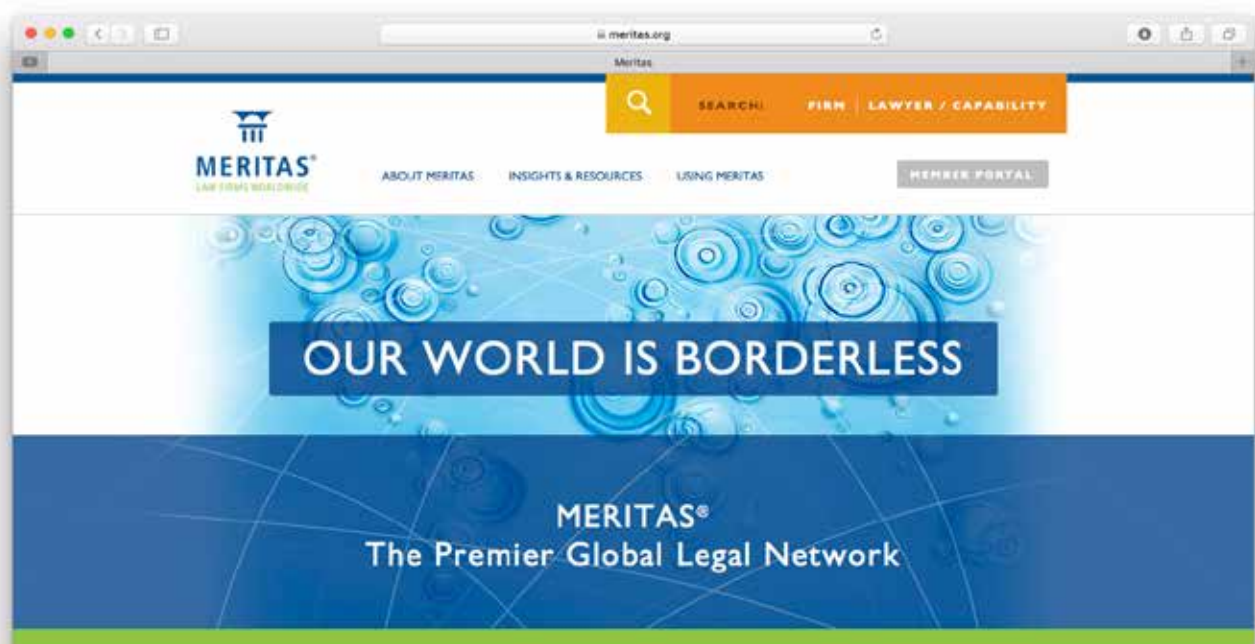
90+
COUNTRIES

180+
LAW FIRMS

240+
GLOBAL
MARKETS

Using this exclusive ongoing review process, Meritas ensures quality, consistency and client satisfaction.

With 182 top-ranking law firms spanning 89 countries, Meritas delivers exceptional legal knowledge, personal attention and proven value to clients worldwide.



For more information visit:





INDONESIA

FIRM PROFILE:

HPRP | Lawyers

Hanafiah Ponggawa & Partners

Hanafiah Ponggawa & Partners (HPRP) is an Indonesia's premier law firm in Jakarta which is engaged in transnational practice. To meet the market's hopes, HPRP endeavours to give clients active and strategic advisory assistance with creative support in the following areas of practice: Corporate and Commercial, Employment and Litigation, Financial Services, Intellectual Property, Real Property, Resources and Infrastructure, and International Trade. HPRP is a member firm of Meritas Alliance, an associate member firm of the Taylor Wessing Network and a member of the ASEAN Plus Group, giving clients seamless access to responsive and high-quality services internationally.

HPRP and its lawyers have been awarded accolades from high profile international organizations such as Legal 500, Asian Legal Business (ALB) Thomson Reuters.

Currently, HPRP is located on two floors (32nd and 41st) with total resources consisting of 12 partners and more than 60 associates lawyers, supported by more than 50 staff.

CONTACT:

FABIAN BUDDY PASCOAL
fabianbp@hplaw.co.id

AL HAKIM HANAFIAH
ahhanafiah@hplaw.co.id

+62 21 570 1837
www.hprplawyers.com



1. What role will the government of Indonesia play in approving and regulating foreign direct investment?

Investment in Indonesia is mainly regulated by the Indonesian Act No. 25 of 2007, passed by the Indonesian House of Representatives (DPR) in March 2007 and enacted on 26 April 2007. This Investment Act, among others, gives the Indonesian Capital Investment Coordinating Board (BKPM) broader authority and powers to regulate matters concerning investment in Indonesia, including licensing authorities.

A primary feature of the Act is the creation of one-stop integrated service centers (PTSP). The centers gather together the relevant licensing authorities under one roof and this helps assist investors in obtaining licenses and fiscal facilities. It is a fast, simple, transparent, and integrated licensing process. With the PTSP, investors will only need to submit an application for licenses along with the required documents to PTSP without going through the relevant ministries separately one by one. Investors are also able to monitor the licensing process through an online system, giving them more certainties regarding the timeframe for the licensing process. This model has so far involved 20 ministries/governmental bodies (in 2017) and reduced the number of bureaucratic difficulties often experienced by investors in the past as well as expedited the process of investing in Indonesia.

Before an investor decides the appropriate investment structure, first the investor should consult a list, so-called “Negative List for Investment in Indonesia”. This list is provided in

Presidential Regulation No.44 of 2016. It defines the possible restrictions applicable for the intended businesses sectors within the Indonesian economy which are open or closed to foreign direct investment. It also determines whether investment in those sectors which are open for foreign shareholding ownership will require a local Indonesian partner or whether other conditions are applicable.

Other than BKPM, the following government ministries and regulatory agencies also play roles in the business activities of a foreign investor.

Ministry of Finance.

Any foreign direct investment in either the finance or financial institutions sector requires prior approval from the Ministry of Finance.

Ministry of Trade.

In coordination with BKPM, this Ministry issues non-fiscal facilities in the form of the issuance of Producer-Importer Identification Numbers (API-P) for imports of machinery, goods and/or materials needed by investors conducting business in Indonesia.

Ministry of Manpower.

This Ministry establishes labor regulations and approves company manpower plans for the use of expatriate workers. Companies seeking to employ expatriates will need to obtain the approval of their Foreign Labor Utilization Plan (RPTKA) and a Foreign Worker Employment Permit (IMTA) from this ministry.

Financial Services Authority (OJK).

This newly established body assumes the obligations of the previous authority known as BAPEPAM-LK

(Indonesian Capital Markets and Financial Institutions Supervisory Agency). It is responsible for the banks’ and financial institutions’ supervisory roles which were previously the responsibility of the Central Bank. OJK has the main function of administering the integrated regulatory and supervisory system for all activities in the financial sector, and the task of regulating and supervising financial services in the banking, capital markets, and the non-bank financial industry sectors.

2. Is it possible for foreign investors to conduct business in Indonesia without a local partner? What corporate structure is most commonly used and best for foreign investors?

In general, investors may conduct business in Indonesia without a local partner if the prevailing Negative List for Investment in Indonesia allows the business to be wholly owned by foreign investors. Some businesses are closed or partly closed to foreign investors depending on the business lines and the Negative List for Investment in Indonesia.

In any case, direct foreign investment in Indonesia has to take the corporate form of a limited liability company. If its investment license is issued by BKPM, the company will be called “PMA Company (foreign investment company)”. Incorporation of a limited liability company is governed by Law No. 40 of 2007.

A principal foreign company may also establish a representative office in Indonesia.

The difference between a PMA Company and a representative office

lies in their authority to conduct business. A PMA Company for its own account may run its businesses, while a representative office has no authority on its own, but its authority is limited to supervising and coordinating the business of its principal and branches, and acting on behalf of the principal company.

The representative office is not allowed to make any business transaction with companies or persons in Indonesia either for export or import or domestic trading for its own account. A representative office will be mostly acting as liaison office for the interest of the principal. The representative office is not an independent legal entity and therefore not allowed to act on its own name. If the representative signs a contract, he/she in that action is to represent the principal, not the representative office. As the representative office does no business, the representative office has no income. The tax ID held by the representative office is mainly for employment payroll tax purposes. Please also note that the representative office is only allowed to be domiciled at the capital of the province or the capital of the city.

There are at least 4 (four) types of the representative office, i.e.:

1. Foreign Trading Company Representative Office under the Ministry of Trade or known as *Kantor Perwakilan Perusahaan Perdagangan Asing – KP3A* (“**Foreign Trading Rep. Office**”) which is subject to Regulation of the Ministry of Trade of the Republic of Indonesia No.96/MDAG/PER/12/2014 as amended by Regulation of the Ministry of Trade of the Republic of Indonesia No. 10/M-DAG/PER/1/2015 concerning

Delegation of Authority to Grant Permits for Investment in Trading Sector to the Head of Capital Investment Coordination Board for the Performance of the Integrated One-Stop Service in Investment Sector. The authority of the Indonesian Ministry of Trade in issuing a business permit in trading sector which contains foreign capital, and/or in accordance with the prevailing laws and regulations become the authority of the Indonesian Government, has then been delegated by that regulation to the Chairman of BKPM;

2. Foreign Company Representative Office under the Indonesian Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or BKPM) or known as *Kantor Perwakilan Perusahaan Asing – KPPA* (“**Foreign Rep. Office**”);
3. Foreign Construction Company Representative Office under the Ministry of Public Works; and
4. Foreign Bank Representative Office under the Indonesian Central Bank.

The most common types of representative offices in Indonesia are the Foreign Rep. Office and Foreign Trading Rep. Office, both of which fall under the same regulation, i.e. Regulation of the Chairman of BKPM Number 13 of 2017 (enacted on 11 December 2017) concerning Guidelines and Procedures for Capital Investment Licences and Non-Licences.

The Foreign Construction Company Representative Office is subject to the Regulation of the Ministry of Public Works of the Republic Indonesia No.10/PRT/M/2014 concerning Guidelines on the Requirement for

the Granting of License for Foreign Representative Business Entity in Construction Services.

Next, the Foreign Bank Representative Office is under the jurisdiction of the Indonesian Central Bank and is governed mainly by the Government Regulation Number 24 of 1999 concerning the Requirements and Procedures for the Opening of Branch Offices, Auxiliary Branch Offices, and Representative Offices of Banks Domiciled Overseas and a number of regulations issued by Indonesian Central Bank.

The Foreign Rep. Office and the Foreign Trading Rep. Office in general oversees approaches, coordination and supervisory services of existing and/or future projects of the company in Indonesia and in the region. The Head of the Foreign Rep. Office and the Foreign Trading Rep. Office has the authority to sign a contract based on a power of attorney for and on behalf of the company, but they are not allowed to conduct business activities and/or provide services and therefore receive income from such business activities/services.

Further, in July 2014, the government of Indonesia issued Presidential Decree No. 72 of 2014 concerning Foreign Worker Utilization and Implementation of Education and Training of Indonesian Workers as Associates for Foreign Workers. It is intended to better align government practices with the requirements under the Indonesian Manpower Act (currently Law No. 13 of 2003) and the latest Minister of Manpower and Transmigration Regulation No. 16 of 2015 on Procedures for Foreign Worker Utilization.

With the enactment of Presidential Decree No. 72 of 2014, the government of Indonesia has liberalized the recruitment of foreign workers to occupy the positions of directors and commissioners for both foreign and domestic companies. Previously, foreign commissioners could only be employed by foreign investment companies. However, the employment of foreign workers has to take into account the Indonesian Manpower Act which prohibits positions in human resources from being occupied by foreign workers.

3. How does the Indonesian government regulate commercial joint ventures composed of foreign investors and local companies or individuals?

As indicated above, under the prevailing Negative List for Investment in Indonesia, certain business sectors are closed for foreign investors. Those sectors include the alcohol beverage industry, gambling/casinos, marijuana cultivation, telecommunication/supporting facility of shipping navigation and vessel traffic information system (VTIS), and management and implementation of radio frequency and satellite orbit spectrum monitoring stations.

The List also designates which industries are open to investment under condition of a joint venture between foreign and domestic capital, such as the telecommunications sector, the building and operation of seaports, power plants and commercial airlines.

The List also partly accommodates the implementation of the

commitment of the Indonesian government in relation to the Association of South East Asia Nations (ASEAN) Economic Community (AEC) by determining benefits for a foreign party coming from ASEAN countries willing to set up a joint venture with a local Indonesian party. The benefits given are, among others, higher foreign share ownership limits and the ability to conduct business in certain areas within the Indonesian region, and to apply for certain business fields, such as motel and lodging services, overseas sea transportation for passengers and cargo (excluding cabotage), maritime cargo handling services, and nursing services.

Under the Regulation of the Chairman of BKPM Number 13 of 2017 (enacted on 11 December 2017) a foreign investment has to (unless otherwise determined by legislative regulations) meet the following conditions:

- having total investment value of more than IDR 10 billion or the equivalent in U.S. dollars excluding land and buildings;
- having subscribed capital and paid up capital value of at least IDR 2.5 billion or the equivalent in U.S. dollars; and
- each shareholder's participation in the company being at least IDR 10 million or the equivalent in U.S. dollars, and the percentage of ownership being calculated based on the nominal value of shares.

4. What specific laws will influence the commercial relationship between local agents/distributors and foreign companies?

Regulation of the Minister of Trade No. 11/M-DAG/PER/3/2006 allows agencies or distributorships of foreign products and services in Indonesia. It makes a differentiation between agents and distributors as follows:

- Agents are those acting on behalf and in the name of the principal on the basis of an agreement to undertake marketing without the appointing principal transferring rights of goods.
- Distributors are those acting for and on behalf of themselves on the basis of an agreement to purchase, store, sell and market goods and/or services owned.

The Ministerial Regulation accommodates the possibility of a foreign principal appointing an Indonesian agent or distributor, and requires the agent or distributor to be registered at the Indonesian Ministry of Trade. Among the required documents included in the registration application are the agency or distributorship agreement legalized by a public notary, a letter from the Indonesian Trade Attaché at the local Indonesian embassy/consulate confirming the legality of the principal's existence, and accordingly a registration identity certificate (STP) will be given by the ministry.

Registration is an important feature introduced by the Ministerial Regulation as a way to protect the local agent/distributor. In the event of early termination, the new agent/distributor will be given a registration

by the Ministry only if the principal has a clean break with the previous agent/distributor.

5. In what manner does the Indonesian government regulate proposed merger and acquisition activities by foreign investors? Are there any specific areas or industries that are heavily restricted or completely prohibited to foreign investors?

Mergers and/or acquisition by foreign investors are mainly subject to:

- The Investment Act (currently Law No.25 of 2007);
- The Negative List for Investment in Indonesia (currently Presidential Regulation No.44 of 2016);
- The Indonesian Company Act (currently Law No.40 of 2007 concerning Limited Liability Companies);
- The Banking Act (currently Law No. 7 of 1992 as amended by Law No. 10 of 1998) and its implementing regulations, if the target company is a bank;
- The Capital Markets Act (currently Law No. 8 of 1995) and its implementing regulations, if the target company is a public company;
- Regulations on Mergers, Consolidations, and/or Acquisitions. The present regulations are Government Regulation (GR) No. 27 of 1998 concerning Mergers, Consolidations and Acquisitions of Limited Liability Companies, GR No. 28 of 1998 concerning Mergers, Consolidations and Acquisitions of Banks;

- Regulations on Mergers, Consolidations, and/or Acquisitions from the perspective of business competition. The present regulations are GR No. 57 of 2010 concerning Mergers or Consolidations of Business Entities and Company Share Acquisitions Resulting in the Possibility of Monopolistic Practices and Unfair Business Competition, Regulation of Head of the Commission for the Supervision of Business Competition (KPPU Regulation) No. 10 of 2010 concerning Notification Form for Mergers and Consolidations of Business Entities and Company Shares Acquisitions, KPPU Regulation No. 11 of 2011 concerning Consultation for Mergers and Consolidations of Business Entities and Company Share Acquisitions, and KPPU Regulation No. 13 of 2010 as amended by KPPU Regulation No. 3 of 2012 concerning Guidelines for the Implementation of Mergers and Consolidations of Business Entities and Company Share Acquisitions Resulting in the Possibility of Monopolistic Practices and Unfair Business Competition.

Merger and acquisition in Indonesia must observe the limits of foreign ownership set for companies with certain line of businesses in the prevailing Negative List for Investment in Indonesia.

6. How do local labor statutes regulate the treatment of employees and expatriate workers?

Local Employees

General labor regulations are regulated in the Indonesian Manpower Act and implemented by the central government through the Ministry of

Manpower and Transmigration. The law ensures the equal rights and opportunities for every worker to choose a job, get a job, or move to another job and earn a decent income regardless of whether they are employed at home or abroad.

Indonesia has a minimum wage set by each provincial government, usually by regulation on an annual basis, subject to approval of the Regional House of Representatives (DPRD).

Disputes which cannot be settled through arbitration or mediation between the parties themselves may be brought before the Industrial Relations Court. Decisions by the Industrial Relations Court are final and binding on both parties, and under Indonesian law no appeal against the decision will be allowed, not even to the Supreme Court.

Foreign companies engaged in business in Indonesia should follow closely all labor regulations, including maintaining detailed employee records throughout the employment of each individual within the company. In our view, a company's best defense in a labor dispute is by maintaining accurate and contemporary records of an employee's performance.

Expatriate Workers

Foreign investors who wish to hire expatriate workers for their operations in Indonesia must ensure that the hiring company has fulfilled all manpower requirements. As in other countries, expatriates in Indonesia are required to have a number of permits approving their stays and employment in Indonesia as stated under the Indonesian Manpower Act. In this matter, the company is under an obligation to obtain written permission from the minister in the form of a

Foreign Employees Utilization Plan (RPTKA) and Foreign Worker Employment Permit (IMTA) from the Minister of Manpower and Transmigration.

Expatriates may only be employed for specific positions and for a specific period of time. In this matter, foreign workers whose working period has expired and cannot be extended may be replaced by other foreign workers. The Indonesian Manpower Act does not allow a foreign worker to occupy a position that deals with the human resources sectors and/or occupy certain positions stated in Annex I of the Ministry of Manpower and Transmigration Decree No. 40 of 2012 concerning Certain Positions that are Restricted for Foreign Workers.

In employing expatriate workers, the company has to have a plan regarding the utilization of foreign workers and it has to be legalized by the Minister or appointed official.

Employment visas of expatriate employees may be renewed, usually without the employee having to leave the country of Indonesia.

7. What role do local banks and government agencies play in regulating the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

Treatment and conversion of local currency

The Indonesian government issued the Currency Act (Law No. 7 of 2011 concerning Currency) and further regulated under Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah in the

jurisdiction of the Republic of Indonesia that obliges the use of Indonesian local currency (IDR/ rupiah) in every transaction aimed at making a payment, settling other obligations using money, and/or other financial transactions conducted in Indonesia, with the exception that the above obligations do not apply to certain transactions in respect to the implementation of the state budget, the receipt or giving of donations from and to overseas, international trade transactions, bank deposits in foreign currencies, and international financing transactions.

Repatriation of Funds Overseas

Repatriation by foreign investors of certain funds from their business ventures is specifically permitted under the Indonesian Investment Act. Such funds vary from capital, profits to proceed from the sale of the investor's assets.

The repatriations shall not prejudice:

- the government's authority to apply provisions which require a report of fund transfers;
- the government's right to receive taxes and/or royalties and/or other government revenues from capital investments;
- the enforcement of laws protecting the rights of creditors; and
- the enforcement of laws preventing harm to the state.

In this regard, the Central Bank of Indonesia (BI) requires any company which transfers funds overseas to submit a report on the Flow of Foreign Exchange to Bank Indonesia. Such reports have to include information and data on trades of goods, services, and other transactions

between citizens and noncitizens, positions and changes in foreign financial assets and/or foreign loan plans and/or realization.

Letters of Credit

Letters of Credit and other instruments of surety are issued by Indonesian banks subject to the regulations of the BI. The terms of payment of Letters of Credit have to be executed on the basis of an agreement between the applicant and the issuing bank and have to be stated clearly in the Letter of Credit concerned. The Letter of Credit has to state the terms for payment at sight, acceptance, or negotiation. Prior approval from the BI for the issuance of an individual instrument of surety is not required. Nearly all basic financial transactions in Indonesia are also governed by regulations of the BI.

8. What types of taxes, duties, and levies should a foreign investor expect to encounter in negotiating an inbound investment in Indonesia?

Since the enactment of laws regarding Regional Autonomy (currently Law No. 32 of 2004 as amended by Law No. 8 of 2005 and lastly amended by Law No. 12 of 2008 which then revoked by Law No.23 of 2014 and further amended twice and lastly amended by Law No.9 of 2015), there have been two classes of taxes in Indonesia: taxes that are collected by the central government and taxes collected by the provincial government. The taxes collected by the central government include Income Tax, Value Added Tax (VAT) and Sales Tax on Luxury Goods (STLG), Tax on Land and Building, Duty on the Acquisition of Rights on Land and/or Building and Stamp Duty.

The provincial governments collect taxes, which include, among others, Taxes on Motor Vehicle, Transfer of Title Tax, Taxes on Motor Vehicle Gasoline, Taxes on Hotels and Restaurants, Taxes on Entertainment, Taxes on Advertisements, Taxes on Street Lighting, and Taxes on Utilization of Ground and Surface Water.

There are tax treaties between Indonesia and 61 other countries to avoid double taxation and prevent fiscal evasion.

While import duties exist for goods and equipment brought into Indonesia, business conducted in Special Economic Zones (SEZ) is afforded special dispensation from many of these duties. Additionally, industrial equipment imported for use in certain sectors may be eligible to receive a specific exemption from excise duties.

9. Do comprehensive intellectual property laws exist in Indonesia and do they provide the same levels of protection for foreign investors as local companies? Will local courts and tribunals enforce IP laws uniformly, regardless of the nationality of the parties?

Indonesia has comprehensive laws on intellectual property. As a member of the World Trade Organization (WTO), Indonesia's intellectual property laws are in accordance with provisions of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

Enforcement actions that are brought to court in Indonesia receive a fair judicial hearing based upon the merits of the case. It can be safely stated that

Indonesian intellectual property laws are followed and enforced by the Indonesian judicial system. The nationality of the parties is not a major issue in the enforcement, as long as the parties provide supporting documentation that may be required or necessary to uphold their interests.

One concern with intellectual property enforcement in Indonesia is the lack of self-initiated enforcement. However, when intellectual property rights owners initiate enforcement actions, they tend to be quite successful (subject to their having supporting evidence available in their favor). Foreign companies can engage local law firms to enforce their property rights in cooperation with the Indonesian police force.

Indonesian law recognizes copyrights protecting a company's work product, registered trademarks/service marks, and trade secrets associated with a company's business and business activities. In addition, industrial designs, integrated circuits layout designs, and plant variety protection rights are also afforded protection under Indonesian law as required under the TRIPS Agreement.

In field of marks law, currently, on September 2017, Indonesia decided to join Madrid Protocol under the Presidential Regulation No.92 of 2017 concerning Ratification to the Protocol relating to the Madrid Agreement concerning the International Registration of Mark, 1989. By ratifying this Madrid Protocol, Indonesia proves its commitment to supporting the development of intellectual property and also in an endeavour to support government program in particular to

build global marks on Indonesia local products and develop small and medium enterprises which can compete in global markets.

In the field of patent law, Indonesia is a party to the Patent Cooperation Treaty, which has procedures for filing patent applications to protect inventions in each of its member states.

10. If a commercial dispute arises, given the choice between local courts or an international arbitration venue, which would offer a more beneficial forum for fair dispute resolution for foreign investors?

As in most countries, dispute resolution in Indonesia is most often handled through contractual clauses agreed to in advance by the parties. This principle applies to both local and foreign businesses and business ventures located in Indonesia.

The three most common methods of dispute resolution in Indonesia are

- Local Indonesian Courts,
- Indonesian National Arbitration Agency (BANI), and
- Singapore International Arbitration Centre (SIAC).

Indonesia is a party to the New York Convention of 1958 recognizing the enforcement of Foreign Arbitral Awards. As a signatory to this treaty, foreign arbitration awards are recognized by Indonesian courts without rehearing the merits of the case. Furthermore, since Singapore is a very short distance from Indonesia, many foreign companies choose to resolve disputes through arbitration with SIAC.

However, just results, fairly decided and based upon the merits of the case, can be obtained in any of the three dispute resolution forums mentioned above, and companies will choose the forum that will bring them the most comfort. In reality, if the dispute involves foreign parties, international arbitration is often more advisable because of the language concern. Arbitration also offers more confidentiality in the proceedings, which is particularly beneficial for foreign parties who do not want to have unfavorable public exposure of their arbitration proceeding.

1.1. What recommendations can you offer for how best to negotiate and conduct business in Indonesia?

When considering investing in Indonesia, foreign investors and/or enterprises may take the following as preliminary guidance:

- seeking local professional advisors who know the industries, local rules, practices and customs, such as lawyers, tax advisors, business and financial advisors and accountants;
- visiting the Indonesian government representative offices in the home country, and the official websites of Indonesian governments engaged in the investment sector to know better the trends, policies, and current market opportunities;
- studying the destination area of the investment to learn more about the community, including the habits and traditions compared to the corporate culture that will be brought in by the investors/enterprises, some of which can be obtained from online newspapers/magazines; and

- selecting potential reliable and knowledgeable strategic local partner(s).

1.2. What practical advice can you share with investors who decide to do business in Indonesia?

In addition to complying with the prevailing laws and regulations, it is helpful to maintain good relationships with the relevant Indonesian government institutions/agencies which will have positive implications for the foreign investors' business in Indonesia. Recognizing and studying the culture and practical habits of the community surrounding the foreign investors' businesses and of the work force will minimize the risk of conflict. The effective advice and company of local professional advisors, as stated above, are also essential.

1.3. Does Indonesia currently have any data privacy laws or regulations? How do they affect business activities?

Indonesia has data privacy law as regulated under Indonesian Minister of Communication and Informatics Regulation No. 20 of 2016 concerning Personal Data Protection in Electronic Systems (MoCI Regulation on Personal Data Protection). This MoCI Regulation on Personal Data Protection is the implementing regulation to the Electronic Transaction Act, Law No. 11 of 2008 as amended by Law No. 19 of 2016 (ITE Act) juncto Government Regulation No. 82 of 2016 concerning Electronic Systems and Transactions (GR on ITE) (all are called Laws on Data Privacy).

In principle, MoCI Regulation on Personal Data Protection targets both Indonesian and offshore companies that retain the personal data of Indonesian citizens. Such view is based on the understanding of Article 2 of the ITE Act which stipulates that any person who takes legal action both within the jurisdiction of the Republic of Indonesia and/or outside the jurisdiction of the Republic of Indonesia, having legal effect within the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and detrimental to the interest of Indonesia.

There are 5 stages in the personal data protection process: (a) acquisition and collection; (b) processing and analysis; (c) storage; (d) display, announcement, transmission, distribution and/or access; and (e) deletion, which all of those processes shall be implemented by each provider at the latest by December 1, 2018. The electronic system used by each provider in managing those processes has to also be certified by the authorized party designated under the Laws of Data Privacy.

Certain provisions are also regulated under Laws on Data Privacy, namely: one of the main obligations of the provider is that all personal data stored in the provider's electronic system has to be encrypted, the retention period of personal data is in accordance with the provisions of legislative regulations governing the mandatory period to keep personal data in each sectoral supervisory and regulatory agency; or for at least 5 years if there are no legislative regulations specifically providing the period, and provider engaged in the

“public services” sector(s) must have an onshore data center and a disaster recovery center which shall be placed in the territory of the Republic of Indonesia.

In addition to the responsibility for data processing, MoCI Regulation on Personal Data Protection also imposes specific obligations upon the provider. For example, a provider has to give a written notification to a personal data owner if there is a failure on data protection by the relevant provider which shall be given by no later than 14 days as from when the failure is discovered by the provider. An electronic system provider also has to establish internal guidelines for data protection purposes and provide audit records of the electronic system administration it maintains.

The legal risks that may arise from the Laws on Data Privacy are that any data owner may file a complaint to the Indonesian Minister of Communications and Informatics (MoCI) if there is any breach on the owner’s data in the form of (i) failure to notify any personal data protection defaults; and/or (ii) damage to the personal data owner as a result of data protection failure. The complaint will be brought before a dispute resolution panel formed by the directorate general appointed by the MoCI. If the complaint cannot be resolved through the dispute resolution mechanism, the claim can be filed to the Indonesian civil court.

14. Are there any recently passed laws or regulations in Indonesia that are expected to affect the activities of foreign investors in the future?

In September 2017, the Indonesian Government issued a new Presidential Regulation No. 91 of 2017 concerning The Acceleration of Business Implementation (GR 91/2017) which generally provides for the acceleration on the issuance of business licenses by the establishment of a task force intended to simplify business license requirements as well as to develop an online system for business licenses application. This GR 91/2017 also mandates the Indonesia Ministers or Head of Institutions, Governors, and Regents/Mayors should evaluate all laws and regulations as the legal basis on the implementation of licensing process. This evaluation includes the recommendation to enhance the prevailing laws and regulation which will serve as reference or legal basis for the issuance of business licenses implemented by the task force at National level as well as by the Ministry/Institution, Province and/or Regency/City levels. Based on the recommendation, the Ministers, Heads of Institution, Governors, and Regents/Mayor shall make the amendment to the existing regulation(s) which constitutes the legal basis for the implementation of business licenses.

In addition, GR 91/2017 also provides that all business licenses under the authority of the relevant Ministers/ Heads of Institution, Governors, and/or Regents/Mayor shall be conducted through an electronic integrated business licenses system (online single submission).

In responding to this GR 91/2017, BKPM is currently formulating guidelines and procedures for licensing and investment facilities as the implementing regulation of GR 91/2017 in simplifying and accelerating the issuance of business licenses for both domestic and foreign investment. This includes among the simplification of requirements to obtain business licenses, the acceleration of the issuance of principle license, and divestment related matters, and accommodating several BKPM related regulations into a single and comprehensive regulation.

15. What is the value and effectiveness of bilateral investment treaties (BIT)?

BITs are expected to provide comfort for investors outside their home state. Globally, BITs have been used by investors from home state to ensure the safety of their investment in host countries, especially in developing host countries, where legal uncertainty is still a major threat to expectations of return on investment.

Indonesia, as a developing country, has endured several cases when BITs were used as one of the vehicles to deliver investment protection for foreign direct investments (FDIs). There are prominent cases where investors utilized Indonesia-home state BITs when they felt that they had experienced bad treatment by the government. The following are cases relevant to the enforcement of BITs in Indonesia:

No.	Case	Date	Dispute Resolution	Article in Question
1.	Rafat Ali Rizvi (Claimant) v. Republic of Indonesia (Respondent) (ICSID Case No.ARB/11/13)	May 19, 2011	May 19, 2011	Articles 1(1)(A), 2(1), and 4(1) UK-Indonesia BIT
2.	Hesham Talaat M.Al-Warraq (Claimant) v. Republic of Indonesia (Respondent)	August 1, 2011	ICSID	Articles 2, 8, 10, 14, 17 of the Organisation of Islamic Cooperation (OIC) Agreement (NON-BIT)
3.	Churchill Mining and Planet Mining Pty Ltd, (Claimant) v. Republic of Indonesia (Respondent) (ICSID Case No.ARB/12/14 and 12/40)	June 22, 2012	ICSID	Articles 2 (1), 4(1), 5, 7 of UK-Indonesia BIT
4.	Planet Mining Pty, Ltd. (Claimant) v. Republic of Indonesia (Respondent) (ICSID Case No.ARB/12/40)	January 22, 2013	ICSID	Note: Churchill Mining Plc, Planet Mining Pty Ltd and the Republic of Indonesia all agreed that the dispute between Churchill Mining and Indonesia, on the one hand, and the dispute between Planet Mining and Indonesia, on the other hand, be adjudicated by the same Tribunal in one consolidated ICSID proceeding.
5.	Nusa Tenggara Partnership B.V. and PT Newmont Nusa Tenggara (Claimant) v. Republic of Indonesia (Respondent)	July 15, 2014	ICSID	Articles 3 (1), 3(4), 5, and 9 of Indonesia-Netherlands BIT

During President Joko Widodo's administration, Indonesia has been supportive on the promotion of FDI. However, there is no clear sign on whether the Indonesian government will renew (or sign) new BITs or give a cold shoulder to renewing or signing new ones. A number of BITs expired in 2015 and 2016 (e.g. Bulgaria, China, France, Italy, South Korea, Laos, Malaysia, and Slovakia in 2015, and Hungary, Pakistan, Singapore, Spain, and Switzerland in 2016). Except for Pakistan, Indonesia has informed all

such countries that Indonesia will not renew the BIT once it expires. The reason for deciding to extend the BIT or not is still a question, since Singapore is the largest foreign direct investor country (home country) for Indonesia.

In our experience of clients wishing to make an investment, they almost never ask about the analysis of the BIT between their home state and Indonesia, and what their options would be if in the future they have a problem with their investment.

Clients are keener to look into tax schemes and structures to decide what the home state for their SPV should be.

Prepared by Meritas Law Firms

Meritas is an established alliance of 180 full-service law firms serving over 234 markets – all rigorously qualified, independent and collaborative. Connect with a Meritas law firm and benefit from local insight, local rates and world-class service.

www.meritas.org enables direct access to Meritas law firms through a searchable database of lawyer skills and experience.



MERITAS[®]

LAW FIRMS WORLDWIDE

www.meritas.org

800 Hennepin Avenue, Suite 600
Minneapolis, Minnesota 55403 USA
+1.612.339.8680