

Indonesia

Capital City	Jakarta
Major Financial Center	Jakarta
Population (2020)	273.5 million
Location	Southeast Asia, archipelago between the Indian Ocean and the Pacific Ocean
Major Languages	Indonesian
Legal System	Civil Law
Square Miles	735,355 sq mi
Gross Domestic Product (2020)	USD 970 billion
Major Exports	Oil and gas, coal briquettes, palm oil, rubber
Currency	Rupiah (IDR)
U.S. Dollar Exchange Rate (as of January 2021)	USD 1 = IDR 14,079.25
Euro Exchange Rate (as of January 2021)	EUR 1 = IDR 17,98.16

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Chapter 19

What Type of Entity Should We Use to Set Up Our Business?

One of the first issues faced by prospective investors in Indonesia is choosing the appropriate legal structure through which to operate their business. The most commonly used of these structures available are limited liability company and representative office. The factors normally used to determine which of these two options is the most appropriate include the following:

- i. Capital requirements;
- ii. The intended business activities to be pursued;
- iii. Liability issues; and
- iv. Tax treatment.

Limited Liability Company

The private company limited structure (“PT PMA”) in Indonesia is similar to a Limited Liability Company (LLC) structure in the US and is the most utilized type of legal entity in Indonesia.

A PT PMA is owned by shareholders (minimum two) and managed by directors (minimum one). The liability of each of the shareholders is generally limited to the total par value of their shares. The shareholders’ direct participation in company affairs is normally quite limited. It is the directors who are responsible for managing company affairs and who owe various fiduciary duties to the shareholders and the company (duty of care, duty of loyalty, etc.).

Unlike a representative office, (see below) PT PMA is treated under Indonesian law as a stand-alone legal entity.

If a multinational wishes to establish a subsidiary in Indonesia, it will likely do so as a PT PMA. If individual investors wish to establish a stand-alone business to generate income in Indonesia, they will most likely do so as a PT PMA.

EXAMPLE: A multinational establishes a wholly owned subsidiary in Indonesia as a PT PMA and obtains proper government authorization. That new company limited then executes a contract to supply auto parts, but then fails to supply those parts. In this situation, the Indonesia purchaser would generally be limited to suing the Indonesian subsidiary for the breach of contract, not its headquarters overseas.

Please note that in order for foreign investors to establish a PT PMA they must commit to invest more than IDR 10 billion (\$720,000 US), excluding land and premises.

EXAMPLE: Swedish investors seek to establish a software services business in Surabaya. Among the requirements to establish the company will be a requirement to submit and fulfill an investment plan committing to invest a minimum of IDR 10 billion (approx. \$720,000 US excluding land and premises).

Representative Office

The representative office structure is very different from the PT PMA structure. Unlike a PT PMA, a representative office is not allowed to earn income. Also, representative offices merely serve as extensions of their head offices overseas. They are not stand-alone legal entities. They are also strictly regulated to performing specific functions designated by statute on behalf of their head offices overseas.

A representative office is managed by a Chief Representative Officer (CRO) who may be either a foreign or an Indonesian national, but such person must be appointed by the director(s) of the parent company abroad. Please note that both positions may not be filled by the same person.

Indonesia recognizes the following types of representative offices:

1. The Representative Office of a Head Office Overseas

A representative office may be established in order to perform only specific functions on behalf of its head office overseas. In this situation, the representative office is commonly referred to as a KPPA.

In general, this office can be established to engage in activities involving most, but not all, industry sectors.

EXAMPLE: A Chinese bank seeks to establish a representative office in Jakarta. This would not be allowed because banking is a sector in which operating a representative office is prohibited.

KPPA activities are limited to:

- a. supervising, liaising, coordinating, and taking care of the interests of its parent or affiliated company(-ies);
- b. preparing for the establishment and development of a future PT PMA in Indonesia or other countries.

KPPA activities must:

- a. be performed in an office building in a provincial capital city;
- b. not generate income from sources in Indonesia including carrying out activities or entering into agreements and purchase transactions for commercial goods or services with companies or individuals in Indonesia; and
- c. not participate in the management of any company involving, a foreign subsidiary or branch office in Indonesia.

2. The Representative Office of a Foreign Trading Company

A representative office may engage in trade in Indonesia in the role of a sales agent, manufacturing agent, or purchasing agent on behalf of their head office overseas (depending upon the head office specification). In this situation, the representative office is commonly referred to as a KPPPA.

KPPPA activities are limited to:

- a. carrying out activities to introduce, promote and develop marketing of goods produced by the parent company and provide information or instructions for the use and import of goods to domestic companies/users;
- b. conducting market research and supervision of domestic sales in the framework of marketing goods of the parent company;
- c. conducting market research on goods needed by the parent company while providing information and insight regarding the conditions for exporting goods to the company; and
- d. concluding a contract for and on behalf of the parent company with a domestic company for exporting purposes.

EXAMPLE: A Finnish company selling exercise equipment to companies in Jakarta seeks to establish a representative office as a KPPPA in order to promote the Finnish company's products in Indonesia and provide information as to their correct and safe use. This should be permissible.

3. The Representative Office of a Foreign Construction Service Enterprise

A license to operate a representative office of a foreign construction service enterprise (BUJKA) may only be applied for by large-scale foreign construction companies providing consultation, construction service, or both. The BUJKA license application must be submitted via the OSS integrated to the Ministry of Public Works' system. After completion of the process, the license will be issued within 5 business days.

It is important to note that establishing a BUJKA requires more paperwork than other representative offices. The foreign investors must have certain certifications as well as proof that the parent company abroad has a good reputation and has a large operation.

Additionally, the CRO of a BUJKA must be an Indonesian national.

4. The Representative Office of a Foreign Oil and Gas Company

A representative office of a foreign owned oil and gas company is commonly referred to as a KPPA Migas. The license will be issued within 5 business days after completion of the application documents.

Chapter 20

What are the Legal Issues Associated with the Start-Up of a Company?

There are several considerations associated with the start-up of a company in Indonesia which are set forth below.

1. Company Name

Reserving a name for a PT PMA can often be complicated in Indonesia. Reserving the company name occurs at the beginning of the company's establishment process, with the shareholders being required to reserve the desired company name together with alternatives in the event the name has already been taken, with a notary. The notary will then check the availability of the name. If the name is available, the name reservation is valid for sixty days, during which the company's registration process must be completed. Failure to complete the registration process will result in having to reserve the name again.

The following are rules of naming a PT PMA:

- a. The name should consist of three words starting with "PT" before the three words;
- b. The name should be in line with the company's business sector;
- c. The name cannot be similar to an existing company or government institution;
- d. The name cannot be against public decency;
- e. The name should be in Roman alphabet only; and
- f. The name should not use a series of words and numbers that does not create a word.

2. Articles of Association

The Articles of Association (AOA) is normally a standard template explaining the basic rules of the company which are subject to the shareholders' agreements. The AOA will generally contain the following information:

- a. Name and domicile of the company
- b. Company incorporation period
- c. Purposes, objectives, as well as the business activities of the company
- d. Amount of authorized capital, issued capital and paid-up capital
- e. Number of shares, shares classification (if any), including the number of shares for each classification, the rights attached to each share, nominal value of each share, shares certificates, and transfer of shares
- f. Board of Directors and Board of Commissioners provisions, including their appointments, responsibilities and authorities, meeting rules, replacements, dismissals and etc.,
- g. General meeting of shareholders provisions including the quorum, place and procedures for holding the meeting, etc.
- h. Procedures for profit utilization and dividend distribution

Note that subject to the shareholders agreement, a foreign investor, although not a majority shares owner percentage in the company, may put reserved matters related to its interests in the AOA.

Please note that it is common for companies in which foreign investors hold a minority shareholding to place reserve matters in the AOA which grant the foreign shareholder a greater degree of control over company matter than they normally would have. Note that such reserve matters must be approved by the other company shareholders.

EXAMPLE: Austrian investors and Indonesian investors register an Indonesia company with the following share structure: Indonesian shareholders hold 65% of the company shares and Austrian investors hold 35% of the company shares. In this situation, the shareholders may adopt AOA requiring the written approval of the Austrian shareholders before the company may make any expenditure of over a certain amount (example \$50,000 US).

3. Required Capital

The rules associated with registered capital of a foreign held company capital are set forth in Chapter 21.

4. Licenses/Permits

PT PMA will be required to obtain general licenses and operating licenses/permits depending on its business sector, namely:

General Licenses:

- a. Business Identification Number;
- b. Tax Identification Number;
- c. Company Registration Certificate;
- d. Certificate of Domicile; and
- e. Business License

Operating Licenses:

- a. Operating Licenses;
- b. Location Permit;
- c. Environmental License;
- d. Manpower Plan; and
- e. Construction Permit.

The above licenses/permits may be obtained by the PT PMA through the On-line Single Submission (OSS) system provided by the Investment Coordinating Board (BKPM). The OSS application process will be advised and carried out by a notary appointed by the PT PMA.

5. Timing and Fees

The following is a summary of a PT PMA's typical establishment process presented together with estimated timing for establishment and official fees:

Typical Steps	Timing	Responsible Party(ies)	Official Fees
Signing a shareholders agreement between/ among founders.	Depends on the founders actions	Founders & attorney (if necessary)	2-3 Stamp duties IDR 10.000 (+/- USD 0,75) each. If the signing occurs abroad then translation, notarization and consularization fee will be required
Approval for PT PMA's name	3 to 5 business days	Notary	Subject to Notary
Signing the AoA/ Deed of Establishment	1 day	Founders and notary	If all founders are in Indonesia during the time of signing they must pay for the Notary fees and 2-3 stamp duties IDR 10.000 (+/- USD 0,75) each. Additional fees for translation, notarization and consularization will be needed if a signatory is abroad
Applying for Certificate of Domicile	3 to 5 business days	Notary and building management where the PT PMA will domicile	Subject to the Notary & Building management
Registration for Business Identification Number	3 to 5 business days	Notary	Subject to Notary
Applying Tax Identification Number	approx. 10 business days	Notary and Tax Authority	Subject to Notary. No fee charged by the tax authority
Opening a bank account	approx. 5 to 10 business days	Founders	2-3 stamp duties IDR 10.000 (+/- USD 0,75) each. Each bank may have different policies for minimum balance and required documents.

Typical Steps	Timing	Responsible Party(ies)	Official Fees
Approval of the Deed of Establishment by MOLHR	approx. 1 to 5 business days	Notary	MOLHR administration fee IDR 1.580.000 (+/- USD 110) and Subject to Notary
The announcement in the state gazette of the Republic of Indonesia	approx. 14 business days	MOLHR	Free
Obtaining necessary license as mentioned above	approx. 14 – 30 business days	Founders & attorney	Subject to attorney
Applying Company Registration Certificate	approx. 1 to 5 business days	Notary	Subject to Notary.

Please note that timing may also depend upon how quickly the required documents may be provided by the foreign investor. This is especially relevant if the signing is conducted outside of Indonesia.

Chapter 21

What are the Legal Issues Associated with Operating as a Foreign-Held Company?

The following is a summary of some common issues associated with the operation of a foreign held company in Indonesia.

1. Managing Shareholder Relationship

Many times a foreign investor will be required to join with a local party whereby the foreigner is the minority shareholder in order to engage in the desired business activity therefore making maintaining control over the company a challenge for the foreign investor. However, note that majority share ownership is not always an indicator of control in a company.

EXAMPLE: A multinational company has only 10% ownership in a PT PMA. However, based on the PT PMA's articles of association, it may appoint more than one PT PMA director, with all material decisions being subject to the multinational company's approval. Thus, the multinational company is considered to be the controlling shareholder in the PT PMA, despite the fact that there are other shareholders owning a higher percentage of shares in the PT PMA.

2. Negative List of Investment

Every PT PMA with foreign shareholders is subject to the Negative List of Investment. Depending on its business activities, certain businesses are fully opened, some fully closed and some opened with a foreign ownership percentage limitation.

EXAMPLE: A German company seeks to establish a PT PMA to engage in airport related business services, however, the negative list of investment limits foreign share ownership to 67% for businesses engaging in this activity. In this situation, in order to engage in this activity the German company would need to find an Indonesian joint venture partner.

3. Capital Requirements

PT PMA capital are classified as authorized, subscribed, and paid up capital. Subscribed and paid up capital must be deposited into the company's bank account amounting to at least 25% of the authorized capital by each of shareholders based on its shares percentage contribution. PT PMA's authorized capital should be in the amount of more than IDR 10 billion (approx. \$720.000 US), excluding land and premises. However, please note that the above represents the minimum requirement and different minimum capital requirements may apply depending on the business sector. If two or more founding shareholders are Indonesian legal persons, the Indonesian shareholder(s) should, also, contribute at least IDR 10 million (approx. \$720 US).

EXAMPLE: Swedish investors seek to establish a software services business in Surabaya. Among the requirements to establish the company will be a requirement to submit and fulfill an investment plan committing to invest a minimum of IDR 10 billion (approx. \$720,000 US excluding land and premises).

4. Articles of Association

The requirements for the company's AOA are stated in Chapter 20.

Note that subject to the shareholders agreement, a foreign investor, although not owning a majority of the shares in the company, many times will attempt to have certain reserved matters related to its interests set forth in the AOA.

EXAMPLE: Austrian investors and Indonesian investors register an Indonesia company with the following share structure: Indonesian shareholders hold 65% of the company shares and Austrian investors hold 35% of the company shares. In this situation, the shareholders may adopt AOA requiring the written approval of the Austrian shareholders before the company may make any expenditure of over a certain amount (example \$50,000 US).

Chapter 22

What is the Process to Obtain a Work Permit?

The process of obtaining a work permit in Indonesia can be a difficult, confusing process or be fairly straightforward depending upon the situation of the employer company and foreign employee. Below is an explanation of the applicable procedures and requirements for both employers and employees.

1. Employer Requirements

In order to hire foreign nationals, the employer must satisfy each of the below listed requirements.

a. Obtain Foreign Manpower Utilization Plan

The employer is required to prepare a Foreign Manpower Utilization Plan (“Utilization Plan” also referred to as a “RPTKA”) and have it approved by the Ministry of Manpower or the appointed authority.

The employer shall submit the RPTKA application and all relevant documents through the Foreign Manpower Online Services (Sistem Online Pelayanan Tenaga Kerja Asing - “TKA Online”), at tka-online.kemnaker.go.id. For this purpose, the employer must first register itself at TKA Online.

Once all information and documents have been submitted, the TKA Online will schedule a voice/video call to verify the documents and information submitted. If all is in order the RPTKA Plan will then be issued within three days as of its receipt and verification of documents by the TKA Online official.

There are 2 types of RPTKA Plans, namely:

- (1) Long Term Utilization Plan, which is valid for 7 to 12 months; and
- (2) Temporary Utilization Plan, which is valid for 1 up to 6 months.

EXAMPLE: Suppose a company seeks to hire 4 foreign engineers to work on a project based in Indonesia. In this situation, the company will be required to submit the RPTKA Plan application covering all foreign workers to be hired. If the foreign worker is to work for a period of more than 6 months, then the company will be required to procure a Long Term RPTKA Plan. If the work period is less or up to 6 months, then the company will be required to obtain the Temporary RPTKA Plan.

b. Obtain Notification and Pay Compensation Fee for Hiring Foreign Employee

The employer is required to obtain an approval notification from the Directorate General of the Development of Manpower Placement and Expansion of Employment Opportunity. In order to obtain the notification, the employer must also pay a non-tax state income payable by the employer for every foreign national hired in by the employer (“DKP TKA). The amount of the DKP TKA is USD 100 per month.

EXAMPLE: Suppose a company hires two foreign nationals to work for a period of 6 months. The calculation of DKP TKA would be USD 600 x 2, which is USD 1,200.

Furthermore, the requirement is not applicable if the employer appoints foreign workers as members of the Board of Directors or Commissioners with shareholding status.

EXAMPLE: A company operating in Jakarta hires 2 foreign managers and each sit on the company’s board. In this situation, the company would not have to pay DK TKA because of the fact that they both serve as company directors.

c. Annual Reporting Concerning the RTPKA Plan

The employer must report the implementation of the Utilization Plan or RTPKA annually. Should any change occur within the year (e.g. change in job title/role, etc.), the employer must report the change to the Directorate General of the Development of Manpower Placement and Expansion of Employment Opportunity.

EXAMPLE: According to the RPTKA Plan, a foreign employee is hired as an assistant production manager. Should the employee be promoted to head production manager, the employer must report these changes to the authorities.

d. Include Foreign Employee in Insurance Package

Employers must ensure that all employees are insured including its foreign employees with a minimum employment contract of 6 months. The insurance provider must be an Indonesian based company authorized by the Financial Services Authority.

e. Include Foreign Employee in Social Security Program

Similar to the above, the employer must ensure that its foreign employees with a minimum employment contract of 6 months must also be included in its Social Security Program.

f. Appoint and Train Designated Indonesian Co-Worker

For every foreign employee hired, the employer must designate an Indonesian national as the foreigner employee's co-worker with the purpose to accelerate the transfer of knowledge/skills while gradually reducing the need for foreign employees. The employer must, also, conduct the necessary training and education for the designated co-workers.

EXAMPLE: An Indonesian company hires a foreign computer engineer to design and maintain the company's communications network. In this situation, the company would also be required to have an Indonesian co-worker to work with and be trained by the computer engineer.

g. Facilitate Indonesian Language Training

Employers must facilitate necessary teaching /training of the Indonesian language to foreign employees

h. Only Hired for Permitted Positions

Foreign nationals are only allowed to hold certain positions in Indonesia. The Indonesian government only allows foreigners to hold certain positions/job titles. The Ministry of Manpower specifies various job titles closed to foreign employees. Generally speaking, these job titles are within the area of human resources/personnel management and workplace safety.

2. Employee Requirements

The employee must obtain the following in order to work in Indonesia.

a. Obtaining Temporary Stay Permit Visa

Upon being engaged for employment by the Indonesian employer while in the foreign employee's home country, the employee must apply for a limited stay permit visa ("VITAS") in the foreigner's home country Indonesian consulate general/embassy.

Within 7 days of arrival in Indonesia, the foreign employee must then convert his/her VITAS into an ITAS card. The ITAS card allows the foreign employee to live in Indonesia for 1 year and may be renewed annually up to 2 times.

b. Obtaining Exit/Re-Entry Permit

Should an ITAS card holder intend to temporarily leave Indonesia, the foreign employee must apply for an exit/re-entry permit from the Immigration Office. The application process usually takes one day and requires the applicant to write a letter requesting to leave the country. The permit is stamped along with the ITAS card in the foreigner's passport.

It is highly recommended to always have a valid multiple re-entry permit stamped on the passport in case of an emergency.

c. Obtaining Visa for Dependents

Obtaining a dependent visa allows the employee's family members to stay in Indonesia. However, it does not entitle the family members to work in Indonesia. The validity period of the dependent visa is similar to the employee's visa.

d. Obtaining Taxpayer Registration Number

A foreign employee registered in the employer's RPTKA and has been working for a minimum of six months in Indonesia must obtain a Taxpayer Registration Number (Nomor Pokok Wajib Pajak/NPWP) from the Tax Office.

e. General Requirements for Foreign Employees

The general requirements for a foreign employee to be hired in Indonesia are:

(i) Educational Background

The candidate must hold bachelor's degree or higher. If the position requires specialized education, then a relevant degree (e.g. in education or engineering) is required;

(ii) Recommendation/Track Record

A recommendation letter from the previous employer, demonstrating that the employee has worked for at least five years.

Chapter 23

What Incentives Are Available to Foreign Investors by the Government?

The Indonesian government offers various incentives to investors engaging in certain promoted projects. The incentives available to these investors depend on the type of industry, location of the project in Indonesia, type of investment, as well as other factors. The government body in charge of processing investment promotion applications and granting incentives is the Indonesia Investment Coordinating Board. This chapter highlights these available incentives as well as applicable requirements.

Applications are submitted to the Badan Koordinasi Penanaman Modal (“BKPM”) via the Online Submission System.

1. Corporate Income Tax Holiday

Below is an explanation of the types of projects eligible to receive tax holidays and the applicable requirements.

a. Eligible Industries

The Indonesian government promotes investor projects entering what the government categorizes as “pioneer industries”. These are industries which, according to the government, provide broad networks, add value & high externality, employ new technology, as well as having strategic value. These include the following:

- (1) integrated upstream metals industry;
- (2) integrated oil and gas purification or refinery industry;
- (3) integrated crude oil/natural gas/coal-based petrochemicals industry;
- (4) integrated basic organic chemicals sourced from agriculture, plantation, or forestry industry;
- (5) integrated basic inorganic chemicals industry;

- (6) pharmaceutical main raw materials industry;
- (7) irradiation, electromedical, electrotherapy equipment manufacturing industry;
- (8) main components of electronics and telematics equipment manufacturing industry, such as semiconductor wafer, backlight for Liquid Crystal Display (LCD), electronic driver, or display;
- (9) machinery and main components of machinery manufacturing industry;
- (10) robotic components manufacturing industry which supports manufacture machinery manufacturing industry;
- (11) main component of electricity generation machinery manufacturing industry;
- (12) automotive and its main components manufacturing industry;
- (13) vessel main components manufacturing industry;
- (14) aircraft main component manufacturing industry;
- (15) railway main component manufacturing industry;
- (16) paper pulp industry produced from agricultural, plantation, or forestry products;
- (17) economic infrastructure; and/or
- (18) digital economy covering data processing, hosting, related activities.

The precise types of investment/project eligible to receive a tax holiday are regulated by the BKPM.

b. Tax Holiday Periods

Companies with projects qualifying as a pioneering industry are eligible to receive a tax holiday for the following periods which are based upon the amount of investment in the project.

Tax Holiday Percentage	Criteria	Extension
5-year 50% reduction	Investment amount between Rp 100 – Rp 500 billion	25% reduction in tax liability granted for 2 years after the end of the initial tax holiday period
5-20-year 100% reduction	Minimum investment of Rp 500 billion	50% reduction in tax liability granted for 2 years after the end of the initial tax holiday period

EXAMPLE: A Japanese auto parts company establishes a factory outside of Bandung to manufacture auto parts with a total investment of 460 billion Indonesian Rupiah and the projects qualifies as a pioneer industry according to the BKPM. In this situation, the project would qualify for a 50% tax reduction for a period of up to 5 years with a 25% tax reduction for years 6 and 7.

Also, note that the tax holiday period begins from the year of the start of commercial operations.

EXAMPLE: Same facts above and the Japanese company receives promotion approval from the BKPM in Year 1, but the project does not commence until Year 3. In this situation, the company's tax holiday period would commence in Year 3. Once approved, the corporate tax holiday is only applicable for income generated from businesses eligible for the tax holiday. Other forms of income (e.g. capital gains, interests, dividends, royalties, debt waivers etc.) are still subject to taxation under the prevailing regulations.

EXAMPLE: A Malaysia company registered in Indonesia engages in the production of kitchenware products for export which is BKPM promoted and in trading in Indonesia which is not BKPM promoted. In this situation, the income related to manufacturing would qualify to receive tax incentives but income from trading would not.

2. Tax Allowance Facility

In addition, investors investing in certain industries and/or less developed areas are potentially eligible for tax reductions.

- i. Additional net income reduction up to a maximum of 30% of the amount of investment in tangible fixed assets, subject to an annual 5% rate for 6 years;

EXAMPLE: A PT PMA's invests the equivalent of \$10 million US in a part of Indonesia and a sector which qualifies it to receive a tax reduction. In this situation, the company would qualify to receive a 5% deduction amounting to the equivalent of \$500,000 annually for the income received from such project. The deduction for 6 years will amount to $6 \times \$500,000 = \3 million US.

- ii. Accelerated depreciation and amortization;
- iii. Loss carry-forward period extension up to 10 years (with additional years eligible subject to certain requirements);
- iv. Tax withholding on dividends distributed to a non-resident shareholder at 10% (unless the applicable tax treaty stipulate a lower rate).

3. Import Tax Exemption

The BKPM also offers import tax exemptions incentives to investors engaging in manufacturing of goods to be exported.

In order to qualify the imported material (raw material or machinery used in production) must meet the following requirements:

- i. Not yet being locally produced in Indonesia;
- ii. If locally produced machines are available, it still unable to meet the specifications of the required machines; and
- iii. If locally produced machines are available, the quantity available is insufficient to meet the number/quantity.

EXAMPLE: A Japanese company establishes a television factory to produce goods for export and imports machinery and raw material to be used in production. In this situation, neither the machines nor the raw material is available in the Indonesian market. Here the company would be eligible to receive the import tax exemption.

Companies in the following industries are eligible to receive a 2-year import duty exemption. Furthermore, if a company utilizes locally produced machinery (with at least 30% local content), it can also directly apply for a 4-year import duty exemption.

- (1) Tourism and Culture
- (2) Public Transportation
- (3) Public Health Services
- (4) Mining
- (5) Construction
- (6) Telecommunications
- (7) Port

Note that the above import tax exemption comes in the form of a duty drawback of import duties.

EXAMPLE: Suppose a Chinese company registers a company in Indonesia, producing mobile devices. The raw material is imported from China. The company is required to pay customs duty upon importation of the raw material into Indonesia. However, when the finished product is exported, the company is eligible to receive a refund/draw back of the duty it initially paid.

4. Special Economic Zones

The Indonesian government has designated several regions to be Special Economic Zones (“KEK”). Companies operating in a KEK can apply for corporate income tax exemptions/reductions, Value Added Tax (“VAT”) exemption/reductions, and import tax exceptional reductions.

Depending on the investment value, a company operating in a KEK is eligible for a tax facility of 20% to 100% reduction in corporate income tax for 10 to 25 years starting from the year of the commercial operation. However, a company who does not obtain the reduction tax facility, may obtain the tax allowance facility.

Furthermore, companies may also be eligible to receive the following VAT and import tax corporate income tax exemptions/reductions.

- i. Non-collection of VAT and LGST on importation or domestic purchase of certain goods;
- ii. Non-collection of VAT and LGST on delivery of certain goods between companies operating inside the KEK;
- iii. Exemption of VAT on importation or delivery of certain taxable goods/services and certain strategic goods designated to be VAT-exempt;
- iv. Deferring of the customs duty;
- v. Exemption of excise on certain goods used to produce final goods not subject to excise;
- vi. Exemption of import taxes.

5. Bonded Zones

The Indonesian government defines a bonded zone as an area designated for processing goods and materials, construction designing, engineering, sorting, performing preliminary inspections, performing final inspections, and packing of imported goods and materials originating from other areas within the Indonesian Customs Territory, mainly for export purposes.

Companies within a bonded zone are eligible for tax incentives in the form of postponement of import duty, exemption from excise, and/or non-collection of import taxes.

Chapter 24

What are the Legal Issues Associated with Foreign Ownership of Land?

Under Indonesian law, only Indonesian national individuals (not local or foreign business entities) are allowed to hold legal title to land and businesses entities are generally limited to holding only leasehold and other non-ownership interests in land as further explained below.

Ownership Rights

In general, there are two ways for foreign investors seeking to obtain rights to land in Indonesia: by establishing a foreign limited liability company (referred to as a PT PMA) and by residing and working in Indonesia.

a. Holding Land Related Rights in Indonesia Through a PT PMA

As highlighted in Chapter 21, one of the key benefits of establishing a PT PMA is that it provides the ability to obtain land related rights in the form of i) leasehold/right to cultivate (“HGU”), ii) right to build (“HGB”) and iii) right to use (“HP”) as further described below.

Type of Land Right	Description of Rights	Maximum Time Rights Period Allowed under Land Law	Maximum Time Rights Period Allowed under Investment Law
Leasehold /Right to Cultivate (HGU)	The right to exploit state-owned land for the purpose of plantation farming, fishing or cattle rearing.	Thirty-five years; may be renewed for an additional twenty-five years.	Ninety-five years and may be simultaneously renewed in advance for period of an additional sixty years; can be renewed for an additional thirty-five years.
Right to Build (HGB)	The right to construct and possess structures on land owned by a 3rd party. In this regard, the owner may be government or other Indonesian entity.	Thirty years; may be renewed for an additional twenty years.	Eighty-five years and may be simultaneously renewed in advance for period of an additional fifty years; may be renewed for an additional thirty years.
Right to Use (HP)	The right to use and/or harvest, from land directly controlled by the State or owned by 3rd parties granting rights and obligations stipulated in the official authorization, or in the agreement to work the land, as long as not in conflict with agrarian law.	Twenty-five years; can be renewed for an additional twenty years or as long as the land is utilized for specific purpose.	Seventy-five years and may be simultaneously renewed in advance for period of an additional forty-five years; may be renewed for an additional twenty-five years.

EXAMPLE: Suppose a foreign company seeks to own rights to a palm tree oil plantation in Indonesia. In this situation, it is most likely for the foreign company to attempt to obtain these rights through a HGU.

EXAMPLE: Suppose a foreign company seeks to build a factory for palm oil processing as well as housing of its employees. In this situation, it is most likely for the foreign company to attempt to obtain these rights through a HGB.

EXAMPLE: A foreign company seeks rights to cultivate on a palm oil plantation from a now defunct palm oil plantation. In this situation, it is most likely for the foreign company to attempt to obtain these rights through a HP.

(i) Rights Periods

As you will see from the above columns on the left, there are 2 maximum land right periods potentially applicable for each type of land right and which of the two will apply, depends upon the applicable investment particulars (see below). These are 1) the maximum available under the land law (less) and ii) the maximum time period available under the investment law (more).

If the project qualifies under the below criteria, the maximum rights period applicable will be prescribed under the investment law.

- (i) Investment is for the long term and is deemed to support the broader transformation of the Indonesian economy;
- (ii) Investment is made with a certain level of investment risk and with certain expectations of a long-term return investment;
- (iii) Investment do not require extensive land area;
- (iv) Investment uses state-owned land rights; and
- (v) Investment is in line with the public interest.

EXAMPLE: Suppose a PT PMA doing business in the energy sector intends to construct a power plant in Indonesia as a HGB. In this situation, the Indonesian government may be more likely to grant the HGU the maximum land rights period under Investment Law (85 years plus renewals) rather than under the Land Law (30 years plus renewals) because the project arguably fulfils the criteria above.

However, if the investment does not meet the above requirements, then the maximum rights period under Land Law shall be applicable.

EXAMPLE: Suppose a Brazilian PT PMA that engages in the management consulting business intends to construct an office building by way of a HGU. In this situation, it is more likely that the PT PMA will be granted the maximum period under the Land Law of 30 years plus renewal rather than the maximum period available under the Investment Law because such a project arguably does not fulfil the above criteria.

(ii) HGU, HGB and HP Certificates

In addition, note that HGU, HGP and HP all share similar characteristics, namely:

- i. all are evidenced by the issuance of certificates from the Indonesian Land Office; and
- ii. all are transferrable and may be used as collateral, subject to the government and/or land-owner's approval.

EXAMPLE: Suppose a Japanese PT PMA obtains a HGU certificate for its plantation business and wishes to sell the HGU certificate to another company. In this situation, the Japanese PT PMA should be able to do so upon receiving approval for the transaction from the Indonesian Land Office.

EXAMPLE: Same facts as above, but instead of the Japanese PT PMA selling a HGU it is instead a HGB or a HP. The Japanese PT PMA should be able to do so upon receiving permission for the Indonesian Land Office.

EXAMPLE: A Korean PT PMA holding a HGU enters into a loan agreement and wishes to use the HGU certificate as collateral to secure the loan. The Korean PT PMA may do so, upon receiving approval from the Indonesia Land Office and the landowner.

b. House and/or Apartment Ownership by Foreign National Residing in Indonesia

A foreign national residing in Indonesia may own a house and/or an apartment that is built under a HP, subject to the condition that the foreign national works and/or invests in Indonesia.

EXAMPLE: Suppose a French national works in Jakarta and seeks to buy an apartment in an office building built by his employer company under a HBG. In this situation the French national would not be allowed to purchase the apartment from the company because the company holds a HBG not a HP.

EXAMPLE: Suppose a Swedish national is a director of a PT PMA residing full time in Indonesia intends to purchase an apartment. He then enters into an agreement with a landowner to purchase an apartment that was built under a HP. In this situation, the Swedish national should be able to purchase the apartment and obtain an apartment ownership certificate.

EXAMPLE: Same facts as above, but the Swedish national only periodically visits Indonesia and does not work there. In this situation, the Swedish national would not be allowed to buy purchase the apartment.

c. Nominees

In order to avoid the above restrictions some foreigners seek to enter into nominee arrangements with Indonesian nationals whereby the Indonesia national would hold title to the land in name only, however, actual control over the property resides with the foreign investor. However, such foreign investors should note

the legal implications and risks associated with utilizing nominee arrangements. Such arrangement is not acceptable from an Indonesian law perspective and is deemed to be an evasion of law and, as such, may be deemed to be null and void. Consequently, if, for example, land were to be purchased using a nominee such land certificate may be revoked by the government and the land returned to the government. Also, note that because Indonesian law forbids this practice when disputes arise, the nominee would likely be entitled to retain the property.