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Doing business
in Indonesia



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Indonesia at a glance

Indonesia is the largest country in Southeast Asia, comprising more than 17,000 islands and 108,000 kilometres of coastline. With two-thirds of its territory being sea, oceans are central to Indonesia's identity and prosperity. The main islands of Java, Sumatra, Kalimantan, Sulawesi and Papua feature spectacular mountain ranges flanked by rich coastal plains, fertile valleys and large areas of lowlands. Indonesia is rich in natural resources such as coal, minerals (tin, nickel, bauxite, copper and gold), as well as oil and gas. Indonesia is bordered by several neighbouring countries such as Malaysia, Singapore, East Timor and Papua New Guinea. Indonesia's large population (with nearly 270 million people) and consumption base is a major reason why Indonesia is ranked as the leading foreign investment destination of choice in Southeast Asia.

Despite heightened uncertainties in global economic conditions that are impacted by the ongoing trade war between the United States and China and COVID-19, Indonesia's economic outlook remains positive. Economic growth has remained steady at above 5% year-on-year, with domestic demand being the main driver of growth. The Indonesian Government is hoping to boost national economic growth by increasing export competitiveness, continuing the ease of business for foreign investment and strengthening general public consumption. In the World Bank's Ease of Doing Business survey, Indonesia is currently ranked 73rd among 190 countries, up from 120th in 2014, an achievement that is in part due to significant progress made by the Indonesian Government in reforming the regulatory environment for businesses. In addition to adopting international accounting and reporting standards, Indonesia has continued to focus on easing the regulatory and tax burdens for operating businesses in Indonesia, which should further benefit Indonesia's drive to attract more investment and improve its competitiveness.

Recognising the pressing need for infrastructure development, the Indonesian Government has increased its focus on improving the regulatory environment and stimulating infrastructure development. Over the past five years, infrastructure spending has more than doubled, and more is expected over the next few years.

The Indonesian Government is actively promoting a scheme for Public Private Partnerships ("PPP") and has issued a list of potential PPP infrastructure projects. The country's economy slowed in 2019 but should strongly accelerate in 2020, and will remain the largest economy in the ASEAN region.

Increasing total electricity generation by 35,000 MW was a key target of President Jokowi in his first term and which has continued in his second term. Many of the power projects are foreign-backed.

Oil and gas remains an important industry in Indonesia, with the development of refineries and more incentives provided for the petrochemical industry. Already self-sufficient in natural gas, the discovery of a massive gas reserve in South Sumatra will return Indonesia to being one of the world's top gas-producing countries.

As per its National Mid Term Development Plan for 2020-2024, the Government aims for per-capita gross national income to reach between US\$5,780 and \$6,160 per year in 2024. This plan focuses on infrastructure and the economy, including the acceleration of renewable energy projects and industry, as well as boosting foreign investment in Indonesia.



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Starting a business in Indonesia

Indonesia continues to improve the ease of starting a business by simplifying procedures, and reducing the time and costs involved in the establishment of the most popular investment vehicle, the limited liability company (“LLC”). The most significant recent improvement made by the Government was the introduction of the Online Single Submission (“OSS”) system as an online platform for business licensing. The OSS system has successfully reduced the number of licences required for LLCs, and most recently in Jakarta, businesses are no longer required to apply for and/or extend domicile letters, import licences, nor company registrations.

There is generally a two-tier process for establishing an LLC, being: (i) first, the incorporation of the LLC and obtaining the approval for such from the Ministry of Law and Human Rights; and (ii) the registration of the LLC and its business licences in the OSS system. In terms of timing, the incorporation of an LLC can be relatively quick, i.e., 3-5 days (excluding any legalisation and/or notarisation which may be required if the shareholders are unable to sign the deed of establishment before an Indonesian notary). This is followed by obtaining all the necessary corporate licences (i.e., a Business Registration Number and Tax Payer Registration Number) and business licences, which typically will take around 2-3 weeks.

Turning negative into positive

Indonesia is a country that welcomes foreign investment; however, not all business fields are available to foreign investment. Presidential Regulation No. 44/2016 regarding Closed Business Fields and Restricted Business Fields regulates those business sectors that are completely or conditionally open to foreign investment. Decisions to close business fields to foreign investment are based on national interests. Business sectors that are not mentioned in the negative list are considered completely open to investment.

It is hoped that the list will become a *positive list* in 2020, whereby it is planned to only limit six areas as being restricted for foreign investment in Indonesia, including the cannabis business, casinos or gambling, industries that use mercury in the production process, and the chemical weapons industry.

Omnibus laws

Indonesia will introduce omnibus laws to align various sectoral laws in order to boost investment and address overlapping legislation in Indonesia. Currently there are two omnibus laws being circulated and discussed between the Government and Parliament, namely the Job Creation Omnibus Law and the Financial and Tax Facilities Omnibus Law. These omnibus laws are intended to streamline the number of regulations and to make them more targeted. The omnibus laws will affect around 100 regulations in the areas of ease of doing business, employment, licensing, environment, as well as financial facilities and tax relaxation.

Corruption

Indonesia has taken steps to increase its enforcement efforts against corruption in the past few years. Although historically individuals have been the focus of enforcement, the trend is changing to also include company prosecutions.

Corporate liability is not a new concept in Indonesia. However, unclear procedural laws have hampered the law enforcement agencies’ efforts to prosecute corporate crimes. This has changed with the introduction of Supreme Court Regulation 13/2016, which sets out new procedures for the prosecution of corporate offenders.

Not long after the enactment of this regulation, the Indonesian Corruption Eradication Commission (“KPK”) named the first corporate suspect for alleged corruption offences. The same company was then found guilty by the Court in early 2019. Other than the KPK, the police have also named corporations as suspects in bribery/corruption investigations.

Considering the trend of prosecuting corporations is likely to continue in the future, it is paramount that corporates which are operating in Indonesia are equipped with adequate procedures to prevent bribery/corruption exposure. It is not sufficient for multinationals to only adopt their headquarters' compliance system and then apply it in Indonesia. The said system must be attuned to local regulations, challenges and culture. Moreover, a specific programme must be developed to address the real risk of public bribery that the corporate entity may face. With an increase in enforcement, having a good compliance system is more important than ever to reduce the risk of bribery/corruption prosecutions being brought in Indonesia.



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Infrastructure and construction

Having experienced significant growth recently, the Indonesian construction industry is expected to continue to grow, driven mainly by government investment in transport infrastructure, energy and utilities construction, and residential project development. The development of infrastructure such as roads, toll roads, airports, seaports will continue to be seen and prioritised.

As growth in the industry continues, it is almost inevitable that disputes between project owners and contractors will also increase. Such disputes may range from classic variations, work delays or suspensions, defects, and payment delays. Based on the case statistics published by a reputable arbitration body in Indonesia, construction disputes accounted for the most number of disputes during the 2014 - 2016 period, whereby 26.6% of all disputes were construction-related.

The Indonesian Construction Law encourages parties to firstly attempt to resolve disputes by way of amicable settlement. If an amicable settlement cannot be reached, the parties can refer to the dispute resolution clause in their construction contract. Common dispute resolution methods include mediation, consolidation, arbitration, or by way of a disputes committee (*dewan sengketa*) established by the Parties.

Since the method of dispute settlement is contractually agreed between the parties to a construction contract, careful consideration should be given to the selection of step-by-step dispute settlement procedures, and a well-drafted clause always helps to achieve efficient and practical resolution.



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1	04-40K25144	2
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6	E4-40K32	1
	SERIE-FREZ	2
7	KSI-40-13	7
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Digital economy

Technological innovation is changing the way that people go about their daily lives worldwide.

The rapid growth of the internet and technology drives the rise of the digital economy in Indonesia, which has boomed in Indonesia, where e-wallets, payment gateways, digital banking services and online loans have boosted e-commerce and small and medium enterprises. Anyone can now buy anything from any part of Indonesia, pay conveniently on the app, and the goods or services will arrive at their door.

As the country with the largest population in Southeast Asia, there are more smartphone users in Indonesia than there are bank account holders; e-wallet and e-money providers are flourishing in capturing this massive, uncharted market.

The government is catching up, and by introducing regulatory sandboxes and omnibus laws, it is trying to balance this rapid growth with regulations that are “fit for purpose” - not too strict so as to hamper innovation, but still attempting to ensure that consumers are protected.



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Employment

Acting on President Jokowi's promise to improve the ease of doing business in Indonesia, in 2018 the Ministry of Manpower ("MOM") issued new regulations on foreign workers – Regulation No. 10 of 2018 on Procedures for the Utilisation of Foreign Workers ("Reg 10/2018"), implementing Presidential Regulation No. 20 of 2018 on the Use of Expatriate Workers ("PR 20/2018"). The new regulations are intended to simplify the procedures and requirements for obtaining work permits for foreign workers and attract more foreign investment into Indonesia.

A key change in the new regulations is the removal of the requirement for a Foreign Manpower Utilisation Permit (*Izin Mempekerjakan Tenaga Kerja Asing* – an "IMTA"). Previously, after preparing a Manpower Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing* or "RPTKA"), the employer had to go through a process of obtaining an IMTA. PR 20/2018 has simplified the requirements by allowing foreign workers to work in Indonesia on the basis of the following:

1. approval of the RPTKA;
2. submission of the foreign worker's details; and
3. obtaining a limited stay permit (known as a KITAS) for the foreign employee.

Reg 10/2019 affords a practical solution against the previously long-standing issue when employing foreign workers for immediate/urgent work. Foreign workers may now commence work without the employer first obtaining an RPTKA. The employer must submit an application for RPTKA within two working days of the foreign worker commencing work.

Further, a year after the issuance of Reg 10/2018 and PR 20/2018, President Jokowi went further to evidence to foreign investors his commitment to making it easier to do business in Indonesia through the issuance of MOM Regulation No. 28 of 2019 on Certain Titles Open for Foreign Workers ("Decree 228"). Decree 228 replaces 19 specific MOM decrees that listed the occupational positions available to expatriates based on the relevant business sector (e.g., construction, education, trade and industry, etc.). Decree 228 revoked all other decrees of the Ministry that set out those positions that are available to expatriates, meaning that advisors can now review a single decree (rather than 19) to determine the positions which may be held by expatriates.

Key points under Decree 228 are as follows:

1. director and commissioner positions are open for foreigners provided that they meet the criteria and requirements for such under Indonesian law and regulations;
2. approving foreigners in positions which are not listed in Decree 228 is at the MOM's sole discretion; and
3. the list of positions under Decree 228 will be reviewed by the MOM every two years, or at any time deemed necessary.

The positions for foreign workers listed under Decree 228 are provided pursuant to the International Standard Classifications of Occupations (ISCO) Code and the Indonesian Standard Occupation Classifications (KBJI).

In total, there are 2,196 positions available for foreign workers under Decree 228. The positions are divided into 18 business sectors, namely, among others, construction, real estate, education, processing industries, transportation and warehousing, financial and insurance activities, mining and extraction, and large/retail trading.

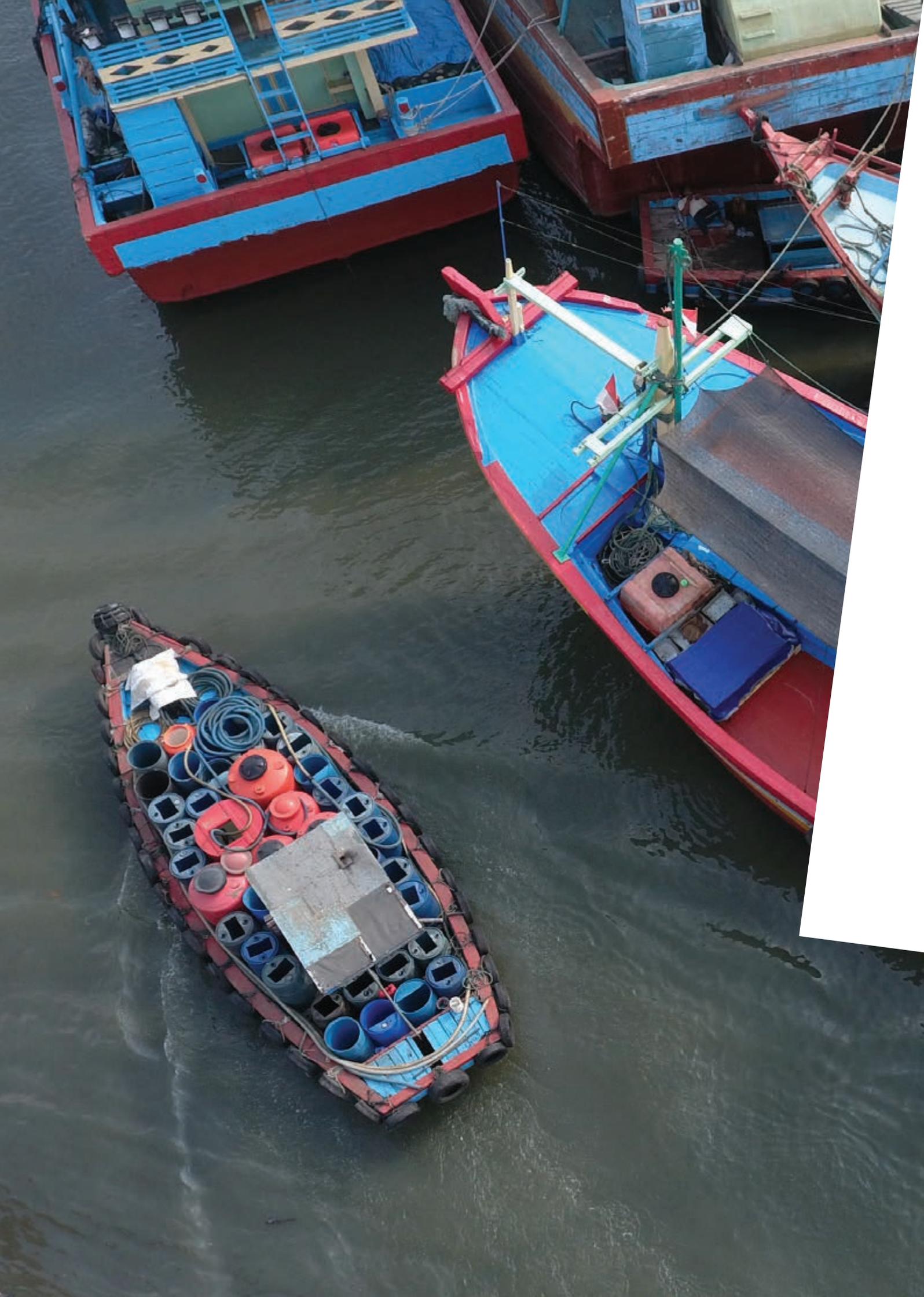


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Distribution

The Indonesian goods supply chain structure is stratified into three prescribed roles, being producers, distributors, and retailers.

Under the distribution regulations, foreign producers appoint distributors to sell their products, as they are prohibited to directly appoint retailers. Local producers who produce their goods in Indonesia are exempted from this requirement as they are permitted to sell the goods directly to retailers. Distributors act as intermediaries between producers and retailers, and are prohibited to sell goods directly to consumers. Retailers sit at the end of the chain, with their role being to buy goods from distributors to be sold to end-consumers.

There are several restrictions that must be considered when starting a business in the trading sector, such as:

1. the prohibition on a single entity simultaneously acting as a distributor and a retailer. This imposes an additional step in the goods supply chain from foreign producers to end-consumers; and
2. the restriction on distributors who are foreign direct investment companies (any company which is not wholly Indonesian-owned) from selling directly to retailers. Distributors who are foreign direct investment companies need to appoint a wholly-owned local distributor to sell their products.

In the retail sector, foreign investors are not permitted to carry out offline (conventional store-based) retail activity, which is reserved for local entities. Foreign direct investment companies may only sell their goods through e-commerce platforms.

The above restrictions may create difficulties for some leading brands to enter the Indonesian market, as they cannot fully control the entire flow of goods from producer to end-customer. They will need to engage a wholly-owned Indonesian entity to act as distributor, which will then sell the goods to Indonesian retailers, and thereafter to end-customers.

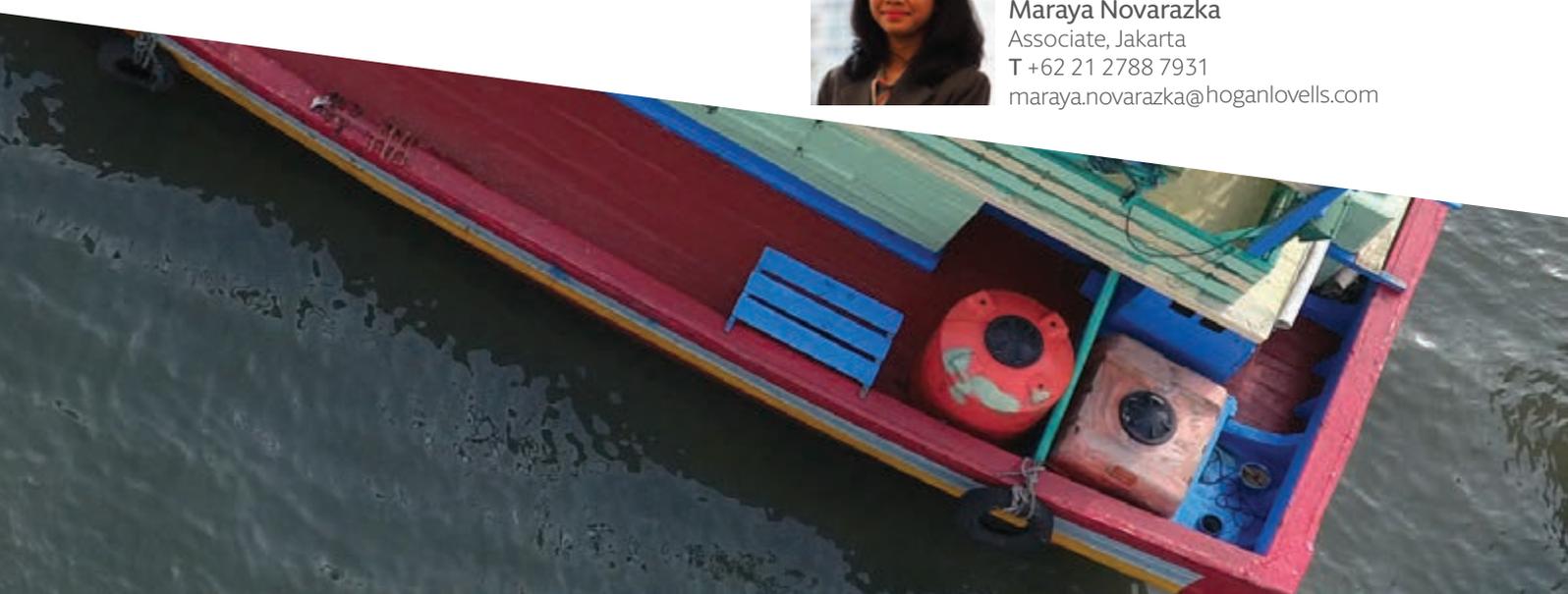
In August 2019, to address the strict requirements under the trading regulations which were seen to be stifling free enterprise, the Indonesian Government issued an amendment which allows distributors to sell goods up the chain to producers. A few changes were introduced, including allowing: (i) distributors to sell products directly to producers without appointment of another entity to act as an intermediary; and (ii) local producers to sell directly to retailers.



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Antitrust and competition

A possible amendment to the Indonesian Competition Law continues to be discussed in Parliament (*Dewan Perwakilan Rakyat*), as the newly-elected Parliament members recently put the Indonesian Competition Law amendment into the Priority Legislation Programme for 2020. Although amendment discussions started in 2014, the process has faced many challenges, especially in respect of the controversial pre-appeal payment of penalties and the expansion of the regulator's authority, and now the draft of the Job Creation Omnibus Law proposes changes to procedural enforcement under the Indonesian Competition Law.

The Indonesian Competition Commission (*Komisi Pengawas Persaingan Usaha (KPPU)*) has itself already made a move by issuing three fundamental regulations in 2019: KPPU Regulation No. 1 of 2019 related to investigation and case examination procedures; KPPU Regulation No. 2 of 2019 related to organisational reforms; and KPPU Regulation No. 3 of 2019 on merger control.

The KPPU is grappling to cope with digital disruption that has changed the way people look at the “market” and “substitutes” – particularly in Indonesia, where start-ups of all shapes and sizes are flourishing and becoming serious contenders to big global players. GoJek started as a service

app that connected motorcycle taxi drivers to customers, but is now a super-app covering food delivery, ride-hailing, home services, a payment gateway, and is planning to expand to video-on-demand services. The limits of conventional markets are being stretched, and the KPPU has a huge task to interpret the term “relevant market” in the digital era.

Then COVID-19 hit Indonesia, pushing KPPU to innovate quickly by introducing KPPU Regulation No.1 of 2020 to facilitate technology assisted investigations and examinations.

On the merger control side, KPPU Regulation No. 3 of 2019 is considered controversial, whereby KPPU now looks at the global assets of a group of companies whilst maintaining the notification threshold, making asset transfers and catching no-nexus offshore transactions as notifiable transactions.



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Disputes, litigation and arbitration

The Indonesian judiciary system has changed significantly in the last decade. The e-Court system was introduced in 2018 and is now mandatory in 56 district courts (first instance courts for general matters, including civil and criminal chambers) across Indonesia. As an example, it is now possible for registered lawyers from Jakarta to file a civil claim in the Makassar district court without needing to travel; all the case registration and payment for the filing fees can be done online.

We used the e-Court system for several cases that we handled in the past year, and found it to be very convenient. Although the e-Court system still needs improvement, this innovation has dramatically increased efficiency, both in terms of time and cost, when litigating in Indonesia.

The Indonesian Supreme Court is also developing an e-Litigation system, which is hoped to be rolled out in the next two years. With e-Litigation, parties will no longer need to be physically present with lengthy waits at the Court for pleadings, as these will be exchanged electronically, and only evidence verification and witness examinations will be carried out conventionally. The judges and court registrar will still provide a case calendar to the Parties, which must be strictly observed.

As the COVID-19 pandemic hits, courts have now implemented a temporary e-litigation system for criminal proceedings, with conventional face-to-face hearings remaining in place for civil proceedings.

As an alternative to court litigation, arbitration is often preferred by parties because of its confidential nature. A well-drafted arbitration clause or arbitration agreement, and the careful selection of the arbitrators, expert witnesses, arbitration rules and seat, can assist in achieving the efficient resolution of commercial disputes. International arbitral awards are enforceable in Indonesia, which is a party to the 1958 New York Convention. However, it is always advisable to seek advice from an Indonesian counsel when seeking to enforce, as the law gives Indonesian courts the discretion to determine whether the award may potentially violate the public order, which could potentially jeopardise any enforcement action.



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Consumer sector

As the fourth most populous country in the world, with the bulk of its population being working age, an e-commerce boom and a rapidly-growing middle class, Indonesia is a ripe market for consumer products. Many companies are expanding into the fast moving consumer goods and fashion industries.

The Indonesian consumer products market is highly regulated; for example, distribution approval is required for cosmetic products and food/beverages; there is a national standard certification for specific products; halal certificates are required in some cases; and animal feed products or ingredients must be registered.

With e-commerce trade driving domestic market, the Ministry of Communication and Informatics recently issued a circular concerning the safe harbour policy that addresses the protection of all related parties in digital transactions (i.e., consumers, sellers, and platform providers). In the pipeline, a draft law on personal data protection is being prepared to address issues in data exchange between various service providers, which up until now has not been sufficiently regulated.



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Although the growth in the consumer industry was in the range of 5 - 7% in 2019, this is expected to further accelerate in 2020.

Consumer protection

To enforce their rights, consumers may file a complaint at the National Consumer Protection Board (*Badan Perlindungan Konsumen Nasional*, “**BPKN**”), which will then forward the complaint to the relevant Consumer Disputes Resolution Board (*Badan Penyelesaian Sengketa Konsumen*, “**BPSK**”) located in every provincial capital. BPSK can facilitate the mediation, conciliation, or arbitration process and issue a final and binding decision to resolve the consumer dispute.

Other than this specialised channel, consumers can also bring a civil lawsuit at the district court by way of a general civil claim on the basis of breach of contract or unlawful act (tort), and the Court will assess the merits of each claim on a case-by-case basis.

Hogan Lovells DNFP

We know Indonesia

Hogan Lovells DNFP in Jakarta, in conjunction with our global network of specialised lawyers, perfectly positions us to provide unparalleled legal services on domestic or cross-border matters involving Indonesia.

Working with Hogan Lovells DNFP, you will benefit from our deep understanding of the Indonesian legal, commercial and cultural environment and our extensive experience and insight gained from working on complex international legal issues for corporations, financial institutions and governments in Indonesia and across the globe.

Whether you're expanding into Indonesia, considering capital from new sources, or dealing with the regulatory landscape or disputes in the local market, we are ready to work with you.

We offer a dedicated, market-leading and truly global team, with an extensive presence in Europe, the US and the Asia Pacific regions.

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