Further information

If you would like further information on any aspect of doing business in Indonesia, please contact a person mentioned below.

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Introduction

Indonesia is the largest economy in Southeast Asia and a member of the G-20 major economies with extensive natural resources, a burgeoning domestic economy and an enviable demographic projection. This attracts significant foreign direct investment, the 9th largest globally. Moreover, in December 2011 and January 2012, Indonesia regained its investment grade status from Fitch and Moody’s, respectively, further demonstrating the country’s positive trajectory.

Hogan Lovells has acted on an increasing range of Indonesian related matters in the energy, natural resources and infrastructure sectors. Building on that, Hogan Lovells has entered into an association with Jakarta-based Hermawan Juniarto to reinforce relationships with Indonesia-based clients, run inbound transactions and matters locally for global clients and to develop new opportunities arising from what is one of the most dynamic markets in the global economy.

Hermawan Juniarto comprises four partners and more than 20 associates, with dedicated corporate, finance, infrastructure, energy and litigation practices. Widely regarded as one of Indonesia’s leading emerging firms, Hermawan Juniarto has ambitious plans to develop its practice in Indonesia.

Hogan Lovells and Hermawan Juniarto are pleased to present this first edition of “Doing Business in Indonesia.”

This publication is intended to provide an overview of the legal framework and regulatory procedures most likely to be relevant to foreign investors considering establishing a business in Indonesia. It also identifies certain legal and practical issues and risks that should be considered by companies planning to invest in or do business with Indonesia. It is our hope that this publication will be able to serve as both a starting point for those unfamiliar with the Indonesian market and as a convenient reference for more experienced participants.

This publication is a general introductory guide only and not intended to provide legal advice. The laws and regulations addressed herein are those current as of April 2013.
Indonesia: Country snapshot

**Official Name**: Republic of Indonesia  
**Population**: 251,160,124 (July 2013 est.)  
**Capital**: Jakarta  
**Government type**: Republic  
**President**: Susilo Bambang Yudhoyono (next election to be held in 2014)  
**Languages**: Bahasa Indonesia (official language), English, Dutch, local dialects  
**Area**: 1,904,569 sq km  
**Religions**: Muslim 86.1%, Protestant 5.7%, Roman Catholic 3%, Hindu 1.8%, other or unspecified 3.4% (2000 census)  
**Ethnic Groups**: Javanese 40.6%, Sundanese 15%, Madurese 3.3%, Minangkabau 2.7%, Betawi 2.4%, Bugis 2.4%, Banten 2%, Banjar 1.7%, other or unspecified 29.9% (2000 census)  
**Median age**: 28.5 years, 28 years (male), 29.1 years (female) (2012 est.)  
**Population growth rate**: 1.03% (2012 est.)  
**Age structure**: 0-14 years: 26.6%, 15-64 years: 66.9%, 65 years and over: 6.4% (2013 est.)  
**Literacy**: 90.4% (age 15 and over can read and write)  
**GDP (purchasing power parity)**: $1.212 trillion (2012 est.), $1.143 trillion (2011 est.), $1.074 trillion (2010 est.) (data are in 2012 US dollars)  
**GDP real growth rate**: 6% (2012 est.), 6.5% (2011 est.), 6.2% (2010 est.)  
**Industries**: petroleum and natural gas, textiles, automotive, electrical appliances, apparel, footwear, mining, cement, medical instruments and appliances, handicrafts, chemical fertilizers, plywood, rubber, processed food, jewelry, and tourism  
**Exports**: $188.7 billion (2012 est.), $201.5 billion (2011 est.)  
**Main exports**: oil and gas, electrical appliances, plywood, textiles, rubber  
**Exports partners**: Japan 16.6%, China 11.3%, Singapore 9.1%, US 8.1%, South Korea 8.1%, India 6.6%, Malaysia 5.4% (2011)  
**Imports**: $179 billion (2012 est.), $166.1 billion (2011 est.)  
**Main imports**: machinery and equipment, chemicals, fuels, foodstuffs  
**Imports partners**: China 14.8%, Singapore 14.6%, Japan 11%, South Korea 7.3%, US 6.1%, Thailand 5.9%, Malaysia 5.9% (2011)  
**Terrain**: mostly coastal lowlands; larger islands have interior mountains  
**Climate**: tropical; hot, humid; more moderate in highlands  
**International organisation participation**: ADB, APEC, ARF, ASEAN, BIS, CD, CICA (observer), CP D-8, EAS, EITI (candidate country), FAQ, G-11, G-15, G-20, G-77, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IDB, IFAD, IFC, IFRCS, IHO, IMF, IMO, IMSO, Interpol, IOC, IOM (observer), IPU, ISO, ITSO, ITU, ITUC (NGOs), MIGA, MONUSCO, NAM, OECD (Enhanced Engagement, OIC, OPCW, PIF (partner), UN, UNAMID, UNCTAD, UNESCO, UNIDO, UNIFIL, UNISFA, UNMIL, UNMISS, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO
Civil law tradition and gradual reform
Indonesia’s legal culture is primarily based on the laws and practices of the Dutch colonial era, which lasted from 1800 (when authority over the colonies that comprised the Dutch East Indies was transferred from the Dutch East India Company to the Dutch national government) until 1942 (when Indonesia was occupied by the Japanese during World War II). Indonesia declared its independence from the Netherlands in 1945 after the Japanese withdrawal. The Netherlands did not, however, recognise Indonesia’s independence until 1949, after unsuccessfully attempting to re-establish Indonesia’s colonial status by force. The era immediately following Indonesia’s independence was characterised by, among other things, inward looking policy reforms, a transition from parliamentary democracy to a more centralised system of “guided democracy”, nationalisation of Dutch enterprises and the expulsion of Dutch citizens from the country.

With the rise to power of Suharto in 1965 (and his ascension to the presidency in 1967), the Indonesian government’s attitude towards foreigners abruptly changed, with a series a policy initiatives and large scale legal reforms aimed at attracting international investors to improve the country’s economy. The Suharto government was authoritarian and viewed as corrupt. However, the government’s efforts to reform and modernise the country and its legal system, which continued until Suharto was forced to resign from the presidency in 1998, were successful in many areas.

In the wake of the Asian Financial Crisis (1997-98), Indonesia’s government devoted significant political and legal authority to the provinces, regencies and cities. It re-initiated widespread legal reform in an effort to improve government institutions, reduce corruption, improve the country’s fiscal and monetary policies and meet other policy goals. The reform period also saw Indonesia successfully transition from an authoritarian state to a democracy, with elections having been held in 1999, 2004 and 2009 (with the re-election of President Susilo Bambang Yudhoyono). The next presidential election is scheduled for 2014. President Yudhoyono is constitutionally prevented from serving a third term, and numerous potential presidential contenders have been identified.

Despite these fundamental reforms, much of Indonesia’s legal system is still based on the Dutch colonial codes that were in effect as of independence and which remain valid until they are revoked and replaced by new laws. Among these, the Indonesian Civil Code remains the cornerstone of Indonesian law regarding contracts and many general rights and obligations relevant to commercial activities. Nevertheless, since independence, these civil law fundamentals have become subject to a complex overlay of laws, regulations and practices that, in many ways, are unique to Indonesia.

Hierarchy of laws and regulations in Indonesia
Indonesia has devolved a significant amount of regulatory authority to the regional governments. The constitutional and institutional arrangements at the national level and the institutional arrangements at the regional level present an interlocking web of policies, initiatives and regulations. Additionally, regulatory authority may be delegated.

By statute, the hierarchy of laws and regulations in Indonesia is as follows:

- **1945 Constitution (Undang-Undang Dasar 1945)** establishes the basic functions of the state and constitutional arrangements.
- **Assembly Decree (Ketetapan MPR)** sets forth a determination of the People’s Consultative Assembly.
- **Law or Government Regulation in Lieu of Law (Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang)** regulates subjects that are governed by the 1945 Constitution.
- **Government Regulation (Peraturan Pemerintah)** implements laws.
- **Presidential Regulation (Peraturan Presiden)** covers subjects mandated by law or the implementation of government regulations (either explicitly or implicitly mandated).
- **Provincial Regional Regulation (Peraturan Daerah Provinsi)** implements principles of regional autonomy and laws, government regulations and presidential regulations in respect of the relevant province.
- **Regency/Municipality Regional Regulation (Peraturan Daerah Kabupaten/Kota)** implements principles of regional autonomy and laws, government regulations and presidential regulations in respect of the relevant regency/city.

The foregoing hierarchy can be used as a reference to resolve the more frequent questions about which rule
should take precedence in the case of a conflict.

Additionally, subordinate to government regulations and presidential regulations is a vast body of national administrative law, composed of ministerial regulations, Bank Indonesia (the central bank) regulations, Supreme Court regulations and regulations of other governmental institutions, which may be promulgated, based on a law, government regulation or presidential regulation. Moreover, directorates general may promulgate regulations based on a regulation issued by the relevant supervising departmental minister. Ministries may also issue decrees (keputusan), which are subordinate to regulations, and circular letters (surat edaran), which are administrative directives intended for the addressee (although they may be referred to as a source of authority in interpreting other regulations or policies). The interaction between national administrative law and regional regulations is based on the principles of regional autonomy.

Indonesian law also recognises the following additional sources of law not specifically addressed in the statutory hierarchy: treaties, customs (adat), case precedents (civil jurisprudence or jurisprudensi) and opinions of legal experts (doktrin). Case precedents and expert opinions are only referred to as references for the application of law, rather than a source of binding legal authority.

**National political system**

Indonesia is a presidential representative democratic republic, with an independent legislature and judiciary. The primary components of the national political system are:

- **President of Indonesia**: directly elected for a five-year term; the president is the head of state, head of government and head and elector of the council of ministers (Indonesia’s cabinet), as well as the commander-in-chief of the Indonesian armed forces.

- **People’s Consultative Assembly** (*Majelis Permusyawaratan Rakyat* or *MPR*): the highest representative and law making body, with the power to impeach the president. It is composed of two houses or chambers: the People’s Representative Council (*Dewan Perwakilan Rakyat* or *DPR*) and the Regional Representatives Council (*Dewan Perwakilan Daerah* or *DPD*). The DPR has 550 members, elected for a five-year term by the people; the DPD has 168 members, elected for a five-year term by each province (4 members to the DPD for each province). All legislation is passed by the DPR, which also monitors the executive branch. The DPD’s authority is limited to matters relating to ‘regional autonomy, the relationship of central and local government, formation, expansion and merger of regions, management of natural resources and other economic resources, and bills related to the financial balance between the centre and the regions’. In 2004 the MPR became a bicameral parliament, with the DPD as its second chamber in an effort to increase regional representation.

- **Supreme Court** (*Mahkamah Agung*): the highest level of the judicial branch in Indonesia. The president appoints the judges of the Supreme Court, which hear cases in 3-judge panels. All civil disputes appear first before a state court, before being heard in the high court, the intermediate appellate court. Other components of the judiciary include the commercial courts, which hear bankruptcy and insolvency cases, as well as intellectual property cases; a state administrative courts, which hear administrative law cases against the government; a Constitutional Court (*Mahkamah Konstitusi*), which hears disputes concerning the legality of laws, dissolution of political parties, general elections and the scope of authority of a state institution; and religious courts to hear specific religious cases.

- **Indonesian Cabinet** (*Kabinet Indonesia*): appointed by the president, the Indonesian cabinet is composed of coordinating ministers, departmental ministers, state ministers and certain non-minister positions (attorney general, cabinet secretary, commander of the Indonesian Armed Forces, chief of the Indonesian National Police, and governor of the Bank Indonesia). Both the state ministers and the departmental ministers head ministries with particular regulatory authority over assigned areas.

- **National Ministries, Departments and Bodies:** Implementation of Indonesia’s laws and policies is formulated and carried out by an array of ministries, bodies and agencies, many of which have a sector-specific authority (such as authority to regulate the oil and gas industry) or area-specific authority (such as authority to regulate land use). Some regulators – such as the Ministry of Trade or the Ministry of Industry – have authority over multiple sectors, and overlapping authority is common. Ministries are sub-divided into directorates general, which may have specific authority over a portion of the responsibilities of the
ministry. In practice, the term department may also be used to refer to a body headed by a minister (e.g. the Ministry of Finance may also be referred to as the Department of Finance).

In addition to the ministries, there are also various national bodies, agencies and institutions (badan, instansi or lembaga) that may play important roles in formulating and implementing government policy.

The reporting lines of these bodies vary: some report directly to the President, others report to a minister and others report to the legislature. Generally, the various national agencies maintain their head offices in Jakarta, but may also maintain regional offices. These regional offices should be viewed as distinct from any regional government offices operating in the same region.
Diagram 1: Selected National Agencies in Indonesia
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<thead>
<tr>
<th>No</th>
<th>Name</th>
<th>Position</th>
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<tbody>
<tr>
<td>1</td>
<td>Dr. H. Susilo Bambang Yudhoyono</td>
<td>President of the Republic of Indonesia</td>
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<tr>
<td>2</td>
<td>Prof. Dr. Budono, M.Ec</td>
<td>Vice President of the Republic of Indonesia</td>
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<td>3</td>
<td>Marsekal TNI (Purn) Djoko Suyanto</td>
<td>Coordinating Minister for Political, Law and Security Affairs</td>
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<td>4</td>
<td>Ir. Hatta Rajasa</td>
<td>Coordinating Minister for the Economy</td>
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<td>5</td>
<td>Dr. H.R. Agung Laksono</td>
<td>Coordinating Minister for People’s Welfare</td>
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<tr>
<td>6</td>
<td>Letjen TNI (Purn) Sudi Silalahi</td>
<td>Minister of State/State Secretary</td>
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<tr>
<td>7</td>
<td>Gamawan Fauzi SH,MS</td>
<td>Minister of Internal Affairs</td>
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<td>8</td>
<td>Dr. Raden Mohammad Marty Muliana Natalegawa, M.Phil, B.Sc</td>
<td>Minister of Foreign Affairs</td>
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<td>9</td>
<td>Wardana</td>
<td>Vice Minister of Foreign Affairs</td>
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<td>10</td>
<td>EE Mangindaan,SIP Bambang Susantono</td>
<td>Minister of Transport</td>
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<td>Vice Minister of Transport</td>
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<td>11</td>
<td>Prof.Dr.Ir. Muhammad Nuh Wiendu Nuryanti Musliar Kasim</td>
<td>Minister of Education and Culture</td>
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<td>Vice Minister of Culture</td>
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<td>Vice Minister of Education</td>
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<tr>
<td>12</td>
<td>Prof. Dr. Ir. Purnomo Yusgiantoro Sjafrie Sjahmoediddin</td>
<td>Minister of Defense</td>
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<td></td>
<td></td>
<td>Vice Minister of Defense</td>
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<td>13</td>
<td>Ir. Mohammad Suleman Hidayat Alex Retraubun</td>
<td>Minister of Industry</td>
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<td></td>
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<td>Vice Minister of Industry</td>
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<td>14</td>
<td>Dr.H. Salim Segaf Al-Jufrie</td>
<td>Minister of Social Affairs</td>
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<tr>
<td>15</td>
<td>Amir Syamsudin, SH. Prof. Dr. Denny Indrayana</td>
<td>Minister of Law and Human Rights</td>
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<td></td>
<td></td>
<td>Vice Minister of Law and Human Rights</td>
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<tr>
<td>16</td>
<td>Gita Wirjawan Bayu Krishnamurth</td>
<td>Minister of Trade</td>
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<td></td>
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<td>Vice Minister of Trade</td>
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<td>17</td>
<td>Drs. H. Suryadharma Ali Nasruddin Umar</td>
<td>Minister of Religious Affairs</td>
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<td>Vice Minister of Religious Affairs</td>
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<td>18</td>
<td>Ir. H. Tifatul Sembiring</td>
<td>Minister of Communication and Information</td>
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<td>19</td>
<td>Ir. H. Suswono, MMA Dr. Rusman Heniawan</td>
<td>Minister of Agriculture</td>
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<td></td>
<td></td>
<td>Vice Minister of Agriculture</td>
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<tr>
<td>20</td>
<td>Dr. Mari E. Pangestu Sapti Nirwandar</td>
<td>Minister of Tourism and Creative Economy</td>
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<td></td>
<td>Vice Minister of Tourism and Creative Economy</td>
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<tr>
<td>21</td>
<td>Zukifli Hasan, SE, MM</td>
<td>Minister of Forestry</td>
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<tr>
<td>22</td>
<td>Prof. Dr. Balthazar Kambuaya, MBa</td>
<td>Minister for the Environmental Affairs</td>
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<tr>
<td>23</td>
<td>Ir. Hatta Rajasa Mahendra Siregar Anny Ratnawati</td>
<td>Minister of Finance (Prt./acting minister)</td>
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<td></td>
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<td>Vice Minister of Finance</td>
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<tr>
<td>24</td>
<td>Ir. Jero Wacik, SE Prof. Dr. Ir. Rudi Rubiandini Suharsyah</td>
<td>Minister of Energy and Mineral Resources</td>
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<td></td>
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<td>Vice Minister of Energy and Mineral Resources</td>
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<tr>
<td>25</td>
<td>Linda Amalia Sari, Sip</td>
<td>State Minister for Women’s Affairs and Child Protection</td>
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<tr>
<td>26</td>
<td>Dr. Nafisjah Mboi, SpA, MPH Ani Gufron</td>
<td>Minister of Health</td>
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<td></td>
<td>Vice Minister of Health</td>
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<tr>
<td>27</td>
<td>Syarif Cicip Sutardjo</td>
<td>Minister of Marine Affairs and Fisheries</td>
</tr>
<tr>
<td>28</td>
<td>Ir. H. Azzaw Abubakar Prof. Dr.re.publ. Eko Prasojo, SIP, Mag.re. publ</td>
<td>Minister of State Administrative Reform &amp; Bureaucratic Reform</td>
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<td></td>
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<td>Vice Minister of State Administrative Reform &amp; Bureaucratic Reform</td>
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<tr>
<td>29</td>
<td>Ir. H. Ahmad Helmy Faishal Zaini</td>
<td>State Minister for Development of Disadvantaged Regions</td>
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<tr>
<td>30</td>
<td>Drs. H. A. Muhamin Iskandar, MSI</td>
<td>Minister of Manpower and Transmigration</td>
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<td>31</td>
<td>Djan Faridz</td>
<td>State Minister for Public Housing Affairs</td>
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<tr>
<td>32</td>
<td>Dr. Syarieffuddin Hasan</td>
<td>State Minister for Cooperatives, Small and Medium Enterprises</td>
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<tr>
<td>33</td>
<td>Ir. Djoko Kirmanto, Dipl. HE Dr. Ir. Hermanto Dardak, MSc</td>
<td>Minister of Public Works</td>
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<td>Vice Minister of Public Works</td>
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<tr>
<td>34</td>
<td>Dr. Andi Alfian Mallarangeng</td>
<td>State Minister for Youth and Sport</td>
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<td>35</td>
<td>Dahan Iskan Mahmudin Yasin</td>
<td>State Minister for State Enterprises</td>
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<td>Vice State Minister for State Enterprises</td>
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<tr>
<td>36</td>
<td>Prof. Dr. Armida Alisjahbana Lukita Dinarasyah Tuvo</td>
<td>State Minister for National Development Planning/Chairman of Bappenas</td>
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<td>Vice Minister for National Development Planning/Chairman of Bappenas</td>
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<tr>
<td>37</td>
<td>Prof.Dr.Ir. H. Gusti Muhammad Hatta</td>
<td>State Minister for Research and Technology</td>
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</tbody>
</table>
Regional governments and regional autonomy
The term regional government (pemerintah daerah) refers to both Indonesia’s provincial governments and regency/municipal governments. Indonesia consists of 35 provinces (provinsi) (4 of which have special status, including the special capital region of Jakarta (DKI Jakarta)). Each of these provinces has its own elected provincial parliament and governor (gubernur). Each province is further divided into regencies (kabupaten) and municipalities (kota), which also have their own parliaments and chief executives (regents (bupati) and mayors (walikota), respectively). In most matters, regencies and municipalities are legally independent of the provinces. The head of a regional government can, with the approval of the regional parliament (Dewan Perwakilan Rakyat Daerah), enact regional regulations independent of the national government.

Indonesia established regional autonomy based on laws passed in 1999 and later refined and amended in 2004. Under such laws, the national government and the regional governments share regulatory authority over all matters except foreign policy, defense, justice, religion, and fiscal and monetary policies which are reserved with the national government.

Additionally, some laws provide that authority over certain sectors or affairs is retained at the national level. If there is a conflict between national and regional legislation, the legislation enacted by the national government will prevail, as it ranks above regional legislation in Indonesia’s hierarchy of legislation.

The role of the regencies and municipalities is primarily to formulate local policies and planning. The role of the provinces is primarily to coordinate internal matters among the regencies and municipalities and act as regional policy maker. Region administration is frequently implemented through regional service agencies (generally known as dinas).

State-owned enterprises
Indonesia’s economy features an array of state-owned enterprises (badan usaha milik negara or BUMN), which include both ‘for profit’ businesses (Persero) and companies established to carry out a public function (Perum). By statute:

- a Persero is a limited liability company with 51% or more of its shares owned by the national government that is intended to be profit-oriented; and
- a Perum, is an entity wholly-owned by the national government (without share capital), intended to function for the people’s benefit.

In practice, however, the line between the two types of state-owned enterprises may be blurred. For example, PT PLN (Persero) (PLN), the state-owned electricity company, and PT Pertamina (Persero), the state-owned oil and gas company, are subsidised by the national budget to facilitate the affordability of electricity and fuel to consumers.

Persero have been especially active in the infrastructure and natural resources sectors and often play a key role in facilitating the national government’s industrial policy. Many Persero are listed on the Indonesia Stock Exchange (Bursa Efek Indonesia or IDX). PT Bank Mandiri (Persero) Tbk and PT Bank Rakyat Indonesia (Persero) Tbk (both state-owned banks), and PT Perusahaan Gas Negara (Persero) Tbk (state-owned gas storage and distribution company) are among some of the largest companies on the IDX.

Region-owned enterprises
Provinces, municipality and cities are legally authorised to form region-owned enterprises (badan usaha milik daerah or BUMD). In practice, there are two forms of region-owned enterprise. The first is a regional company (perusahaan daerah), the constitution and organisation of which are subject to specific statutory requirements. Examples of regional companies include the various regional drinking water companies (known as perusahaan daerah air minum or PDAM), PD Pasar Jaya (DKI Jakarta’s regional company for market businesses), and PD PAL (DKI Jakarta’s regional company for sanitation services). Regional governments have also established ‘for profit’ limited liability companies (perusahaan terbatas) under Indonesia’s Company Law. These companies have operated in the fields of banking, construction services and infrastructure and property development, among others.

A revised legal framework for region-owned enterprises has been considered by the legislature, which would adopt a formal division of region-owned enterprises into companies ‘for profit’ (Perseroda) and companies carrying out a public function (Perumda). This division would be intended the follow the distinction between Persero and Perum applicable to state-owned enterprises.
Public service agencies
An office or working unit within a government institution, both national and regional, can form a public service agency (badan layanan umum or BLU) to provide service to the public, without a profit motive, in the form of sales of goods and/or services. A BLU applies a different financial management scheme from the national or regional budgetary systems, which provides an increased degree of flexibility regarding the BLU’s use of funds. BLU can invest, cooperate with other parties to generate income and make expenditures in relation to its activities to the extent approved by the Minister of Finance (in the case of national BLU) or the respective head of region (in the case of a regional BLU). The Indonesia Investment Agency (Pusat Investasi Pemerintah or PIP) is an example of a national BLU. At the regional level, the Provincial Government of DKI Jakarta has established BLU Transjakarta to manage and operate the bus rapid transit system in Jakarta. Unlike BUMN and BUMD, a BLU is not a limited liability entity.
Establishing a business and the Company Law

Many international and regional businesses have chosen Indonesia as an investment destination due to the country’s young workforce, plentiful natural resources and growing domestic market. The Indonesian government, realising the reciprocal opportunities from foreign investment, has worked to attract further investment by broadening the investment opportunities available to foreign investors, including specialised schemes for the development of the country’s natural resources and the provision of public infrastructure.

However, the regulation of foreign direct investment does retain some protections for local businesses, manpower, goods and services, as well as, in some cases, requirements of partial or total local ownership.

**Representative offices**
A foreign investor can develop a presence in Indonesia by establishing a representative office. Generally, there are three types of representative office:

- Foreign Company Representative Office
- Foreign Trade Company Representative Office
- Construction Service Provider Representative Office

**Foreign Company Representative Office and Foreign Trade Company Representative Office**
A foreign company representative office is approved by the Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal or BKPM). A Foreign Trade Company Representative Office is approved by the Minister of Trade. The purpose of either office is to market and promote the interests of the relevant foreign company, liaise with affiliates and engage in other non-profit making activities (e.g. procuring goods, giving presentations and conducting market research).

The office can buy items and sign contracts but it is prohibited from making a profit by engaging in business activities in Indonesia.

**Construction Service Provider Representative Office**
Foreign construction companies may establish a representative office in order to bid for potential projects and develop construction projects in Indonesia. Unlike a foreign company representative office or a foreign trade company representative office, a construction service provider representative office may be a profit making operation. Consequently, the regulatory requirements for establishing these offices are comparable to establishment of a licensed Indonesian construction service company, although there are some differences.

The representative office can only carry out construction projects if they are considered to be high risk, high cost or if the project requires a certain type of technology which the relevant foreign company possesses. The representative office is required to execute projects with a local construction company partner pursuant to a joint operations agreement. In comparison, under Presidential Regulation Number 36 of 2010 on Lists of Business Fields Closed to Investment and Business Fields Open, With Conditions, to Investment (2010 Negative List of Investment), foreign ownership of an Indonesian company that provides construction services where the value of the work is more than IDR 1 billion is limited to 67% and foreign ownership of an Indonesian company that provides construction consulting services is limited to 55%. In order to establish a Construction Service Provider Representative Office, a foreign construction company is required to obtain a license from the Minister of Public Works.

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<th>No.</th>
<th>Work Description</th>
<th>Month 1</th>
<th>Person In Charge</th>
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<tbody>
<tr>
<td>1</td>
<td>Preparing and completing application of the Representative Office License (Izin Kantor Perwakilan Perusahaan Asing - “KPPA”) from Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal – “BKPM”)</td>
<td>1</td>
<td>The Parties or its proxy</td>
</tr>
<tr>
<td>2</td>
<td>Obtaining Representative Office License from BKPM</td>
<td>2</td>
<td>The Parties or its proxy</td>
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<tr>
<td>3</td>
<td>Applying for Taxpayer Identification Number to the Tax Office</td>
<td>3</td>
<td>The Parties or its proxy</td>
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<tr>
<td>4</td>
<td>Obtaining Taxpayer Identification Number from Tax Office</td>
<td>4</td>
<td>The Parties or its proxy</td>
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</tbody>
</table>
Limited liability companies
For purposes of investment regulation, Indonesian companies are categorised as follows:

- **Foreign capital investment company (PMA company):** having any amount of foreign investment; entitled to fiscal incentives and other investment incentives; licensed by BKPM; registered with Ministry of Law and Human Rights and Ministry of Trade.

- **Domestic capital investment company (PMDN company):** having only domestic shareholding; entitled to fiscal incentives and other investment incentives; licensed by BKPM; registered with Ministry of Law and Human Rights and Ministry of Trade.

- **Domestic company (non-PMA/non-PMDN company):** having only Indonesian shareholding; registered with Ministry of Law and Human Rights and Ministry of Trade.

In most cases, a foreign company intending to carry out business activities in Indonesia that are eligible for foreign investment would do so by establishing a PMA company. Additionally, in limited areas, such as upstream oil and gas and construction services, a foreign entity may become licensed to do business in Indonesia.

Negative list of investment
Business sectors that are open to foreign investment under certain conditions or closed to foreign investment completely are primarily identified by the 2010 Negative List of Investment (also known as *Daftar Negatif Investasi* or DNI). Business sectors that are not identified in the DNI are generally considered to be open to foreign investment without restriction, unless another law and regulation provides otherwise. The conditions for foreign investment imposed by the DNI include imposition of a maximum amount of foreign shareholding, requiring a local partner, reserving certain areas for micro-, small- and medium-sized enterprises and cooperatives, and imposing special licensing requirements. The DNI is periodically updated, with the most recent version (as of this publication) having been issued in May 2010.

The business sectors identified in the DNI are generally based on the Indonesian Standard Industrial Classifications (*Klasifikasi Baku Lapangan Usaha Indonesia* or KBLI), which have been developed with...
Doing business in Indonesia

reference to, among other things, the International Standard Industrial Classification of All Economic Activities (ISIC) of the United Nations and the ASEAN Common Industrial Classification. The KBLI is also periodically updated, with the most recent version (as of this publication) having been issued in December 2009.

BKPM makes determinations of the appropriate business sector for a proposed investment as part of its review and processing of registrations and approvals. Some proposed business activities may not clearly fall into one category in the DNI or KBLI; either multiple categories may appear to apply or the business activity does not appear to fit in any category. In such cases, investors are well advised to seek a preliminary opinion from BKPM before lodging a formal application.

In addition to restrictions under the DNI, laws and regulations may impose further restrictions and conditions on foreign involvement in regulated business sectors, such as natural resources, shipping, health care, banking and construction, to name a few. Such conditions may include special licensing regimes for foreign entities, capacity/output requirements or personnel requirements. Consequently, the legal feasibility of a proposed foreign investment should be assessed with reference to both the DNI and applicable sectoral regulations.

Prohibition on nominee arrangements

Law No. 25 of 2007 on Investment (2007 Investment Law) expressly prohibits arrangements where a person holds shares in a company for the benefit of another person, and provides that such arrangements are null and void by operation of law. This prohibition applies both to the PMA companies and to domestically owned companies (PMDN and regular (non-PMA/ non-PMDN) companies). However, the primary purpose of the prohibition on nominee arrangements is considered to be to prohibit agreements intended to circumvent Indonesia’s foreign investment restrictions, by having a domestic party hold shares on behalf of a foreign investor.

Establishing a PMA company

Standard form documentation for initiating establishment of a PMA company through BKPM (or a Regional Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal Daerah or BKPM)), where the company is to be domiciled in a region with a BKPM), has been made available on BKPM’s website (http://www.bkpm.go.id/). Generally, the foreign investor must submit the proposed activities of the PMA company, its shareholders and capital structure, together with required administrative information and supporting documentation, for approval to the BKPM, and/or any other relevant government agency from which an endorsement is required.

After the proposed foreign investment is registered with BKPM, the foreign investors need to carry out the following steps, amongst others, in order to establish and incorporate a PMA company:

- execute the deed of establishment and the articles of association of the PMA company before a notary;
- have the notary process the deed of establishment with the Ministry of Law and Human Rights through its electronic filing system, “Sisminbakum,” and arrange for publication of the deed of establishment in the State Gazette (Berita Negara Republik Indonesia);
- open an Indonesian bank account and deposit share capital in said account; and
- obtain a certificate of domicile.

After the PMA company is incorporated, the company needs to process and obtain various licenses, permits and approvals necessary to commence commercial operation, employ personnel, commence construction, import capital goods and carry out other activities. These include a taxpayer identification number (Nomor Pengenal Wajib Pajak or NPWP), an Importer Identification Number (Angka Pengenal Impor or API), a company registration certificate from the Ministry of Trade (Tanda Daftar Perusahaan or TDP), and work permits for expatriates, among others.

The BKPM approvals issued to a PMA company set various terms and conditions of the licenses. Prior to 2007, these conditions would include a requirement that a portion of the PMA company’s shares be divested to Indonesian shareholders after a certain time period (generally 15 years after the commencement of commercial operation). The 2007 Investment Law removed the general divestment requirement for a PMA company. However, a PMA company incorporated before the promulgation of the 2007 Investment Law may still be subject to divestment requirements and companies operating in regulated industries (such as mining) may be subject to divestment requirements particular to their industry.
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<thead>
<tr>
<th>No.</th>
<th>Work Description</th>
<th>Month 1</th>
<th>Month 2</th>
<th>Month 3</th>
<th>Month 4</th>
<th>Month 5</th>
<th>Person In Charge</th>
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<tbody>
<tr>
<td>1</td>
<td>Preparing and completing Investment Registration Application with Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal – “BKPM”)</td>
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<td>The Parties or its proxy</td>
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<tr>
<td>2</td>
<td>Searching and reservation of Company’s unused/available name and obtaining validation in Ministry of Law and Human Rights (“MOLHR”)</td>
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<td>Public Notary</td>
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<td>3</td>
<td>Obtaining Investment Registration from BKPM</td>
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<td>The Parties or its proxy</td>
</tr>
<tr>
<td>4</td>
<td>Drafting and preparing the draft of Deed of Establishment of Company</td>
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<td>Public Notary</td>
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<tr>
<td>5</td>
<td>Finalizing and executing the draft of Deed of Establishment of Company</td>
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<td>The Parties and Public Notary</td>
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<td>6</td>
<td>Obtaining Location/Domicile Letter</td>
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<td>The Parties or its proxy</td>
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<tr>
<td>7</td>
<td>Obtaining Taxpayer Identification Number</td>
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<td>The Parties or its proxy</td>
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<tr>
<td>8</td>
<td>Opening Bank Account on behalf of the Company</td>
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<td>The Parties</td>
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<tr>
<td>9</td>
<td>Obtaining the approval from the MOLHR and Company Registry and arranging announcement of the Company’s legal entity in the State Gazette</td>
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<td>Public Notary</td>
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<tr>
<td>10</td>
<td>Obtaining Company Registration Certificate</td>
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<td>The Parties or its proxy</td>
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<tr>
<td>11</td>
<td>Preparing and completing the in Principle Permit from BKPM (if applicable)</td>
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<td>The Parties or its proxy</td>
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<td>12</td>
<td>Obtaining the in Principle Permit from BKPM (if applicable)</td>
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<td>The Parties or its proxy</td>
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<tr>
<td>13</td>
<td>Preparing, completing and obtaining the relevant regional government permits*</td>
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<td>The Parties or its proxy</td>
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<tr>
<td>14</td>
<td>Preparing, completing and processing Permanent Business License (IUT) from application, including its attachments.</td>
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<tr>
<td>15</td>
<td>Obtaining Permanent Business License (IUT)</td>
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<td>The Parties or its proxy</td>
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*Note: Some business activities may require completion of an Environmental Impact Assessment (AMDAL) and Nuisance Permit before obtaining Business License (IUT).
Indonesian company law
An Indonesian limited liability company is a legal entity governed by Law No. 40 of 2007 on Limited Liability Company (the Company Law) that is distinct from its shareholders. Limited liability of the shareholders becomes effective upon approval of the company’s establishment (and its articles of association) by the Minister of Law and Human Rights. Prior to such approval (but after the articles of association of the company have been signed), the founders of the company are considered to be partners and may be held liable for the obligations of the to-be-established company. Commonly, a newly established company will assume any such obligations of the founders shortly after the minister’s approval is obtained and ratify such assumption of obligations in the first general meeting of shareholders of the newly established company.

Indonesia’s Company Law recognises the concept of “piercing the corporate veil,” under which a shareholder may be held liable for fraud or other wrongful acts committed in the name of the company. A shareholder may be held liable for the company’s act if the requirements to form the company as a statutory body are not fulfilled; the shareholder directly or indirectly, with bad intention, utilises the company for personal interests; the shareholder is involved in an unlawful act committed by the company; or the shareholders, directly or indirectly, unlawfully use the assets of the company, which causes the assets of the company to become insufficient to settle the liabilities of the company.

Corporate governance
There are three bodies that govern the activities of an Indonesian company: the board of directors, the board of commissioners and the shareholders. The board of directors is responsible for the daily management of the company. The board of commissioners is responsible for the supervision of the management of the company and advising the board of directors. The shareholders are entitled to exercise approval powers at the general meeting of shareholders or through circular resolutions passed unanimously.

A director or commissioner of an Indonesian company may be held personally liable for causing the company to become insolvent, if such director or commissioner was in office as of, or within the five-year period preceding, a declaration of bankruptcy and the bankruptcy is due to his or her fault or negligence, and the bankruptcy estate is not sufficient to cover all obligations of the company. Additionally, 10% or more of the shareholders of an Indonesian company may bring a suit against a director or commissioner for causing losses to the company through fault or negligence. Liability may also be imposed on a director of a limited liability company for certain types of statutory violations (e.g. causing a company to violate environmental requirements).

An individual is not permitted to be a member of both the board of directors and the board of commissioners.

Board of directors
Generally, the board of directors of a private Indonesian company need only have one member. Public companies, companies that collect or manage public funds and companies that issue debt instruments to the public are required to have at least two directors.

Generally a board of directors of a PMA company can be entirely comprised of foreigners. Although (because directors are expected to be involved in the day-to-day management of the company) the foreign directors should be authorised to work and be resident in Indonesia.

Directors are appointed by the shareholders for a specified term and may be re-appointed for subsequent terms. Any change in the composition of the board of directors (either by way of new appointment, replacement or dismissal), must be notified to the Ministry of Law and Human Rights no later than 30 days after the meeting minutes approving such appointment by the shareholders are notarised.

Board of commissioners
The board of commissioners is responsible for the supervision of the management of the company. Generally, the board of commissioners need only have one member. As is the case for the board of directors, public companies, companies that collect or manage public funds and companies that issue debt instruments to the public are required to have at least two members of the board of commissioners.

The company’s articles of association may stipulate the presence of an independent commissioner, who is a person not affiliated with the shareholders, the members of the board of directors or the other members of the board of commissioners.

Generally a board of commissioners of a PMA company can be entirely comprised of foreigners. Because commissioners only provide a supervisory role, they do not need to be authorised to work or be resident in Indonesia.
In addition to board of commissioners, a company applying Sharia law principles is required to have a Sharia supervisory board (dewan pengawas syariah). The Sharia supervisory board must consist of one or more sharia experts appointed by the shareholders based on the recommendation of the Indonesian Council of Islamic Leaders (Majelis Ulama Indonesia).

Members of the board of commissioners are to be appointed for a certain period and may be re-appointed. If there is a change in the composition of the board of commissioners (either by way of new appointment, replacement or dismissal), the board of directors is required to notify the Ministry of Law and Human Rights no later than 30 days after the meeting minutes approving such appointment by the shareholders are notarised.

In carrying out their supervisory role, the board of commissioners may establish committees, which report to the board of commissioners.

**Corporate social responsibility**
Under the Company Law and related regulations, companies with business activities in the field of, and/or relating to, natural resources are required to implement corporate social and environmental responsibility (CSR). Such companies are required to have an annual CSR program. A report regarding the implementation of the CSR program must be included in the company’s annual report and must be disclosed to shareholders.

**Capitalisation and shareholding structure of a private company**
The Company Law stipulates that the minimum authorised capital of an Indonesian company is IDR 50,000,000 (approximately USD5,450) and at least 25% of such authorised capital must be fully paid-up. Certain sectors, however, may impose higher capital requirements, and BKPM may require higher capitalisation of a PMA company in connection with its review of a proposed investment according to their internal policies.

The share capital may be paid-up in the form of money and/or an in-kind contribution, based on a reasonable value determined in accordance with market prices or by an independent appraiser. The shares paid by immovable property (land and/or buildings) must be announced in one or more newspapers within a period of 14 days after the deed of establishment is signed or after the general meeting of shareholders passes a resolution regarding the relevant share subscription.

The capital of a company may be increased upon approval of the general meeting of shareholders. If the company increases its authorised capital, the increase requires an approval from the Minister of Law and Human Rights. If the company increases its issued and paid-up capital only (within the authorised capital), the increase must be reported to the Minister of Law and Human Rights (but is not subject to approval by the Minister of Law and Human Rights). In the case of a PMA company, any change in the company’s capital structure must be reported to the BKPM. The Company Law provides each shareholder pre-emptive rights in the case of a capital increase. All shares issued on a capital increase must first be offered to each existing shareholder in proportion to their ownership of shares within the same share classification.

A company may also make a reduction to its capital, based on approval from a general meeting of shareholders. The proposal must be announced in one or more newspapers within a period of no later than seven days from the date of the relevant shareholders’ meeting. Within a period of 60 days as from the date of the announcement, the company’s creditors may submit written objections to the resolution to reduce the company’s capital, and the company must respond within 30 days. Capital reduction constitutes an amendment of articles of association that requires approval from the Minister of Law and Human Rights.

The nominal value of shares must be stated in IDR (although the equivalent in US dollars may be stated in the articles of association and the foreign investment approvals from BKPM). All shares issued must be recorded in a shareholder register (Daftar Pemegang Saham) made by the board of directors; the shareholder register also contains a record of share transfers and any encumbrance on the shares (by pledge or fiduciary security). The shareholders may also be given proof of ownership of shares in the form of a share certificate.

In addition the board of directors is required to make and keep a special register (Daftar Khusus) that contains information regarding shares in the company, or in other companies owned by of the members of the board of directors and board of commissioners, together with their families, and the date when such shares were obtained.
Generally, a share gives the owner the right to attend and cast one vote in the general meeting of shareholders (although under the Company Law there may be a class of shares without a voting right) and receive payment of dividends and the remainder of assets upon the company’s liquidation.

Shares may be encumbered with a pledge or fiduciary security provided that doing so is not prohibited under the articles of association. A shareholder may transfer its shares to another person by executing a deed of shares transfer. The articles of association specify the method of share transfers and may refer to any conditions relating to the same. In the case of a PMA company, any share transfer also requires an amendment of the relevant BKPM approval (which identifies which entities are authorised to hold shares in the PMA company and their respective capital contribution to the company).
Investment incentives, free trade zones and bonded zones

Investment incentives
Indonesia’s investment incentive programmes are primarily administered by BKPM (for PMA and PMDN companies) and, for general fiscal incentives, the Ministry of Finance and its directorates.

The following goods have been eligible for an exemption from import duties:

- capital goods, such as machinery, equipment and auxiliary equipment (for an import period of two years from the effective date of the import duties exemption decision).
- goods and materials or raw materials that are to be used as materials or components to produce finished goods or to produce services for the purpose of two years full production (accumulated production time).

The following income tax incentives have also been made available (based on Article 31A of the Income Tax Law):

- investment tax allowance in the form of taxable income reduction of as much as 30% of the realised investment spread over six years.
- loss carry forward for a period of up to 10 years.
- accelerated depreciation and amortisation.
- 10% income tax on dividends (which may be further reduced, based on a double taxation treaty).

There is also an exemption from Value Added Tax (VAT) for certain business sectors.

Moreover, businesses involved in manufacturing goods for export may receive:

- restitution of import duties paid on the importation of goods and materials needed to manufacture the exported finished products.
- exemption from VAT and sales tax on luxury goods and materials purchased domestically that are to be used in the manufacture of exported products.

The company can import raw materials required regardless of the availability of comparable domestic products.

Tax Holiday Regulation
Government Regulation No. 94 of 2010 regarding the Facility of Exemption and Reduction of Corporate Income Tax relating to Capital Investment provides additional bases for income tax reduction for investments in certain “pioneer industries,” which are referred to as industries providing added value and positive externalities for
the Indonesian economy, introducing new technology or operating in strategic industries. According to the Ministry of Finance, pioneer industries include metals, petroleum refining, petrochemicals, machinery, renewable energy, and communications. In order to be eligible for this fiscal incentive:

- the amount specified in the applicant’s investment plan must be at least IDR 1 trillion;
- the applicant must deposit at least 10% of the amount of its investment plan in a bank in Indonesia;
- the applicant must be a legal entity established in Indonesia whose incorporation is approved or legalized after 15 August 2010; and
- the applicant must not have already received an income tax reduction based on Article 31A of the Income Tax Law (as described above).

**Bonded zones**
A bonded zone is a building or defined area where companies prepare products to be exported. Companies in bonded zones must sell their goods to the international rather than domestic market. Bonded zones have been established in Indonesia in order to promote exports from Indonesia through providing certain incentives to the companies operating in the bonded zone. These incentives include the following:

- suspension of import duties, exercise tax, luxury tax, income tax collected at import and based on other activities (known as Article 22 Income Tax) and VAT on goods and equipment used in the production process of goods;
- permission to sell scrap or waste to Indonesia if at least 5% of the waste used is attributable to material used in the production process; and
- exemption from certain other licensing requirements imposed elsewhere in Indonesia.

Conducting business in a bonded zone requires a specific license issued by the Director General of Customs and Excise through the relevant Customs Office.

**Special economic zones**
The Indonesian authorities have established legal framework for special economic zones in order to encourage multinational companies to invest and operate in such areas. In order to provide a competitive and investor friendly environment, fiscal and non-fiscal investment incentives will be offered. Currently, there are around 60 proposals for establishment of special economic zones, including Siumangkeu (North Sumatera) and Tanjung Lesung (Banten).

The incentives that can be given in special economic zones include:

- exemptions on VAT and luxury goods taxes;
- suspension of import duties and exemption from excise and income tax on importation;
- deduction on land and building taxes;
- deduction on corporate income taxes;
- non-fiscal incentives, such as special immigration and permitting procedures; and
- exemption from foreign ownership limitations (as normally applicable) to some extent.

The supervision and authority body in special economic zones in Indonesia is conducted under the National Council (Dewan Nasional) at the central level and the Area Council (Dewan Kawasan) at the provincial level. The Area Council is responsible for serving, supervising, and controlling operationalisation of special economic zones.

**Free trade zones**
A Free Trade Zone (FTZ) is a geographic area within Indonesia which is free of import duties, VAT, and sales tax on luxury goods. FTZ and free ports are intended to be locations for the development of various business areas.

A FTZ retains its status for 70 years from the date of the designation. Currently there are three FTZs that have been established in Indonesia:
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- **FTZ Batam**. FTZ Batam was established in 2007. It includes the island of Batam, Tonton Island, Setokok Island, Nipah Island, Rempang Island, Galang Island, New Galang Island, Janda Berias Island and surrounding clusters.

- **FTZ Bintan**. FTZ Bintan was established in 2007. It covers most of Bintan district zone, the entire area of Galang Batang Industrial Park and Maritime Industrial Park, Lobam Island, and some parts of the City of Tanjung Pinang, including the Senggarang Industrial Estate and Dompak Barat Industrial Estate.

- **FTZ Karimun**. FTZ Karimun was established in 2007. It covers half of Karimun Island and the entirety of Karimun Anak Island.

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1 Batam was established as an industrial zone in 1973. In 1974, the government designated several areas in Batam Island as bonded warehouse operations areas. In 1978, the entire island was designated as bonded warehouse operations areas, and in 1984 the government enlarged the area by including several islands around Batam in this designation. In 2007, Batam’s status was changed from a bonded warehouse operations area to a FTZ.
Mergers, acquisitions, joint ventures and other corporate transactions

Due diligence
Conducting due diligence on Indonesian companies presents various difficulties due to the lack of easy to access or reliable public records of constitutional corporate documentation, encumbrances on corporate assets, share capital or land ownership and related encumbrances. Whilst companies are required to publish their articles of association in the State Gazette (Berita Negara), which is a matter of public record, the available information is frequently incomplete and may omit, among other things, records of share transfers completed after the company’s establishment. In short, a search of public records cannot verify a company’s name, its shareholders, its directors or commissioners, its articles of association or whether its assets or its share capital are subject to any encumbrances or liens. Public records can, however, establish some historical information about a company in relation to the foregoing matters with the exception of encumbrances and liens.

Completing due diligence on an Indonesian company is also complicated by the seemingly never-ending licenses, permits and approvals required to conduct business in Indonesia and the related reporting requirements. Such reporting requirements are especially common in more heavily regulated sectors. For example, a mining company may have to make various periodic reports to, among others, the regency in which it is operating, the Ministry of Mineral and Energy Resources, the Ministry of Forestry, the relevant environmental regulator and BKPM. The target company’s records may not contain evidence of compliance with all applicable reporting requirements.

Although such requirements are generally viewed as administrative in nature, in many cases the penalty for failure to comply includes license revocation. In addition, the terms of a license may impose various performance obligations and conditions on the license holder, some of which frequently cannot be verified by documentary evidence. These obligations and conditions may, in some cases, exceed the general provisions of the law applicable to the license holder.

The licensing documentation may contain important information regarding the history and operations of the target, some of which may be highly technical in nature. As a result, a foreign acquirer without personnel that can speak and read Bahasa Indonesia would be well advised to retain third party advisors that have staff with such capabilities.

Third party advisors to the acquirer participating in a due diligence exercise would commonly include international and local legal counsel, financial, accounting and tax advisors and, in some cases, human resources advisors and environmental advisors. In contrast, smaller target companies may decline to retain any third party advisors or to keep their involvement to a minimum.

Acquisitions of private companies
Completing an acquisition of a private Indonesian company primarily involves compliance with Indonesia’s Company Law and the foreign investment regulations. In regulated sectors, such as telecommunications or mining, additional filings must be made and approvals obtained. However, in most cases, these requirements are applied to both public and private companies. Additionally, BKPM may require a support letter from the relevant sectoral regulator in order for it to approve a proposed transaction.

Where the target is a PMA company, the impact of the foreign investment regulations primarily depends on whether the acquisition is direct or indirect. In a direct acquisition, BKPM’s approval of the share transfer is required and the PMA company’s BKPM license will have to be amended to reflect the new shareholding structure. This process is generally straightforward, although some transactions may be complicated where the regulatory treatment of the target company’s line of business has changed since the company’s establishment. Additionally, a direct acquisition is subject to Indonesia’s Company Law, which imposes various requirements in connection with the direct change of control of an Indonesian company (including public notice requirements and a requirement that employees be notified).

In an indirect acquisition, BKPM’s approval is not required (although any corporate name changes in the shareholders as a result of the acquisition should be reflected in an amendment to the applicable BKPM license).

Where the target of a foreign buyer is a domestic capital investment company (PMDN company) or a domestic company, the process involves conversion to a PMA company and, in substance, raises issues similar to those faced by parties establishing a new PMA company. These issues include assessing whether the lines of business of the target are eligible for foreign investment under the DNI and, if so, whether there are any restrictions imposed. The conversion to a
PMA company would be a condition to completion of the acquisition.

**Joint ventures**

Incorporated joint ventures involving a foreign investor may be established as a new PMA company (in the case of ‘greenfield’ projects and new business operations) or through the foreign investor acquiring a stake in an existing company.

The parties to the incorporated joint venture will typically enter into a joint venture agreement or shareholders’ agreement to supplement the terms of the company’s articles of association. There are no particular requirements for the agreement except that its terms should not contravene the mandatory corporate governance requirements of Indonesia’s Company Law, the applicable foreign investment regulations, or matters of public policy. It is increasingly common for the agreements to be in dual-language (English and Bahasa Indonesia) due to the requirements of Law No. 24 of 2009 and for such agreements to be governed by Indonesian law (even where a choice of foreign law clause would be enforceable). Generally, such agreement will include an arbitration clause, with parties tending to select regional arbitral forums.

Indonesian state-owned enterprises, however, have exhibited a strong preference for BANI arbitration (domestic arbitration). Foreign investors acquiring a stake in an existing joint venture established by domestic investors may find no joint venture or shareholders’ agreement in place among the existing domestic shareholders, which may be comfortable relying on only the articles of association.

Although the time required for establishing a PMA company has become shorter in recent years, the process still is time consuming when compared to other jurisdictions.

Accordingly, a joint venture agreement may appropriately address the process of company establishment in detail and allocate responsibilities among the parties for facilitating this process.

**Acquisitions of public companies**

Acquisitions of Indonesian public companies – known as “open companies” or *perusahaan terbuka* (which have the “Tbk.” suffix attached to their corporate name) – are subject to regulations promulgated by Indonesia’s capital markets regulator (from 1 January 2013, Indonesia’s Financial Services Authority *(Otoritas Jasa Keuangan or OJK)*) and, for listed companies, the rules of the IDX. By statute, a public company is defined as a company that has at least 300 shareholders and issued capital of at least IDR 3 billion, or such other number of shareholders and issued capital that may be stipulated in government regulations.

Acquisition of a public company also must comply with the Company Law to the extent applicable to public companies. As is the case for private companies, additional regulatory requirements may apply in the case of acquisition of a company in a regulated sector, such as banking, insurance or oil and gas exploration and production.

**Defining an Acquisition**

The capital markets regulations define an acquisition of a public company as any direct or indirect act that results in a change of the controlling party of the public company. A controlling party is defined as:

- a person that owns more than 50% of a company’s shares; or
- a person that has the ability to control the company directly or indirectly (e.g., by way of appointing or dismissing the directors or commissioners of the company or amending the articles of association of the company).

The Company Law provides that the acquisition of an Indonesian company can be effected through either the sale and purchase of already issued shares from an existing shareholder (or shareholders) or through the acquirer’s subscription to newly issued shares from the target company (through a capital increase or rights issue). In the case of a public company, the sale and purchase of already issued shares can be effected through a negotiated transaction with the target’s controlling party or through a voluntary tender offer. A directly negotiated sale and purchase transaction with a controlling party will generally be followed by a mandatory tender offer in respect of the shares held by the public, as further detailed below.

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1 Prior to 1 January 2013, the Capital Markets and Financial Institution Supervisory Board (Badan Pengawas Pasar Modal dan Lembaga Keuangan or “BAPEPAM-LK”), which reported to the Minister of Finance, was the regulatory body overseeing all matters relating to capital markets, non-bank financial institutions (such as pension funds) and insurance in Indonesia. The main functions of BAPEPAM-LK were drafting capital market rules and regulations; establishing disclosure principles; and supervising business activities (including licensing and registration requirements). The regulations on which this discussion regarding public companies is based were promulgated by BAPEPAM-LK prior to the transition of authority to OJK and, where appropriate, we have replaced references in the regulations to BAPEPAM-LK with OJK.
**Negotiation and Disclosure**

An acquisition of a public company is typically preceded by negotiations between the potential acquirer and either the controlling party of the target (in the case of an acquisition of existing shares) or the board of directors of the target (in the case of an acquisition of newly issued shares).

A prospective acquirer who commences such negotiations for the purpose of acquiring a public company is required to make an announcement in at least one nationally circulated Indonesian language newspaper, and to convey such announcement directly to the target company, OJK and, if the company is listed, the IDX.

The announcement must include:

- the name of the target company;
- an estimate of the amount of shares that is proposed to be acquired;
- the identity of the prospective acquirer, including its name, address, business activity and the potential acquirer’s reason for pursuing the acquisition;
- the amount of any securities in the target which are already owned by the prospective acquirer (if any);
- any plan, agreement or determination among parties to cooperate in an organized group to act as the potential acquirer (e.g., acting as a consortium); and
- the proposed method and procedure for the negotiation.²

If, following the announcement of negotiations, no deal is reached, the unsuccessful suitor must announce the termination of negotiations in at least one nationally circulated Indonesian language newspaper and convey the same to OJK and, if the company is listed, the IDX.²

**Shareholder Approval**

The proposed terms of the transaction will require the approval of the target’s shareholders to the extent required by capital markets regulations and the company’s articles of association.

Unless the articles of association provided a higher threshold:

- an amendment to the articles of association of a public company, or an increase in authorised capital, requires the approval of 2/3 of the shareholders with valid voting rights in attendance at the shareholders meeting; and
- an acquisition, merger, encumbrance or sale of substantially all the assets of a public company requires the approval of 3/4 of the shareholders with valid voting rights in attendance at the shareholders meeting.

Because the existing shareholders of a company have a right of pre-emption in respect of any new issue of shares, if the acquisition is proposed to be conducted through the issue of new shares, existing shareholders will have to agree to waive their right of pre-emption, or to transfer their right to acquire the newly issued shares, to an extent that allows the acquisition of a controlling interest by the proposed acquirer.

Capital markets regulations specify the procedures for convening a meeting of the shareholders of a public company, including related formalities and notice requirements.

**Announcement of a Successful Acquisition**

A successful acquirer is required to announce the acquisition in at least one nationally circulated Indonesian language newspaper and to convey the result to OJK and, in the case of a listed company, the IDX within one working day of the transaction’s completion. Such announcement should include the following information:

- the amount of shares which were acquired and the total amount of shares now owned by the acquirer;
- the identity of the acquirer, including its name, address, telephone, facsimile and business activity (if any), as well as the acquirer’s reason for pursuing the acquisition; and
- if applicable, a statement that the new controlling party is an organized group.

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² The prospective acquirer may also provide information on the content of the negotiations. If a prospective acquirer chooses to disclose information regarding the negotiation process and/or the status of the negotiations, then the prospective acquirer is thereafter required to announce any changes to the status of these negotiations, including postponement of negotiations and/or cancellation of the planned takeover, in at least one nationally circulated Indonesian language newspaper. This announcement must be submitted no later than the end of the second working day after the change. Given these requirements (and the general commercial sensitivity that may surround the negotiations), a potential acquirer seldom makes any announcements relating to the content or progress of the negotiations.
Mandatory Tender Offer
Following a change in the controlling party of a public company, the new controlling party is required to conduct a mandatory tender offer for the remaining shares of the company, subject to certain exceptions detailed below.

A tender offer is not required in respect of:
- any shares owned by the shareholder from whom the new controlling party acquired the shares to effect the acquisition;
- any shares that the new controlling party has separately offered to purchase on the same terms and conditions as were agreed with the predecessor controlling party;
- shares owned by any other party who also conducted a mandatory tender offer or voluntary tender offer for shares of the same public company at the same time (i.e., another potential acquirer);
- shares owned by any shareholder who owns at least 20% of shares of the public company; and
- shares owned by any other controlling shareholder.

Announcement of Mandatory Tender Offer
The new controlling party is required to announce the mandatory tender offer as well as provide supporting documents to OJK and the target company within two days following the announcement of the successful acquisition.

Moreover, if any additional information and/or amendments to the initial announcement are requested by OJK, the additional information and/or amendments must be submitted no later than five working days after receipt of the request.

OJK will review the initial announcement and will determine whether the new controlling party is permitted to disclose the information to the public. The new controlling party is required to announce the mandatory tender offer in a nationally circulated Indonesian language newspaper within two working days upon receiving written confirmation from OJK, authorising the new controlling shareholder to disclose the information.

Completion of a Mandatory Tender Offer
Following the publication of the notice of the mandatory tender offer, the shareholders in the target company have 30 days to accept the offer at the price stipulated. The process of acceptance by the shareholders is proscribed by regulation, with all share transfers and payments being effected through the buyer’s and sellers’ respective securities companies or custodian banks. The offeror is required to acquire any shares in respect of which the tender offer has been accepted within the offering period (the 30-day period following the public notice of the tender offer). Payments must be received from the offeror within 12 days of the end of the offering period or the acceptance will lapse.

Free Float Requirement
In the event that the acquisition results in a controlling party owning more than 80% of the target company or there being fewer than 300 shareholders in total (except, in each case, where the company is taken 100% private), then the new controlling party is required to divest or re-float sufficient shares, or to cause the company to issue new shares, to reduce its shareholding to below 80% and/or increase the number of shareholders to above 300. In either case the shareholding must be reduced and/or the number of shareholders increased within two years of the initial acquisition.

Voluntary Tender Offer
A voluntary tender offer is an alternative way for a potential acquirer to acquire a controlling stake in a target by way of purchase or exchange with other securities. The offer can be made by any party (whether an existing shareholder or not) and is typically made through the media, meaning that an offer will be made to the public at large through newspapers or magazines, television, radio or other electronic methods, letters, brochures or other items.

Voluntary Tender Offer Statement
The party who intends to conduct a voluntary tender offer is required to convey a voluntary tender offer statement to the target company, OJK, any other party who has also announced a voluntary tender offer concerning the same target company but whose tender period has not ended yet and, for listed companies, the IDX.

3 The supporting documents include financial information prepared by an independent auditor, a brief summary of the articles of association of the tenderor and the public company, a legal opinion from an independent legal consultant and information on the valuation of the shares appraised by an independent appraiser. Where any independent consultant or adviser is involved with the supporting documentation such consultant or adviser must be registered with OJK.
Additionally, the party who intends to conduct a voluntary tender offer is also required to announce such statement in at least two Indonesian language newspapers, one of which is nationally circulated, on the same day as the submission of the voluntary tender offer statement to OJK.

**Effectiveness of Voluntary Tender Offer Statement**

A voluntary tender offer statement will become effective (i.e., capable of acceptance) on the earlier of the following to occur:

- OJK issuing a written approval of the voluntary tender offer;
- where OJK has not requested, and the potential offeror has not proposed, any changes to the voluntary tender offer statement, 15 days having elapsed from the date the voluntary tender offer statement is received by OJK; or

- where OJK has not requested, and the potential offeror has not proposed, any changes to the voluntary tender offer statement, 15 days having elapsed from the date last changes submitted by the potential offeror or based on OJK’s request.

A voluntary tender offer must commence within two working days upon the voluntary tender offer statement becoming effective. The period of a voluntary tender offer is at least 30 days and may be extended up to 90 days, unless otherwise agreed by OJK.

**Completion of a Voluntary Tender Offer**

A voluntary tender offer is completed in the same manner as a mandatory tender offer.

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**Diagram 3: Acquisition of public company**

<table>
<thead>
<tr>
<th><strong>Negotiation</strong></th>
<th><strong>Acquisition</strong></th>
<th><strong>Tender Offer</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Announcement of negotiation in newspaper</td>
<td>1. Announcement of acquisition in newspaper</td>
<td>1. Deliver announcement to OJK</td>
</tr>
<tr>
<td>2. Delivery of announcement to target company, OJK and, if applicable, IDX</td>
<td>2. Delivery of announcement to target company, OJK and, if applicable, IDX</td>
<td>2. Conduct tender offer for 30 days following announcement</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Complete the tender offer at the latest 12 days after closing of tender offer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4. Information disclosure regarding tender offer in newspaper</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5. Deliver the tender offer report to OJK at the latest 5 days after the completion of transaction</td>
</tr>
<tr>
<td></td>
<td></td>
<td>At the latest 2 years</td>
</tr>
</tbody>
</table>

If the new controlling party holds more than 80% of shares after completion of the tender offer, it is obliged:

1. to fulfill ‘free float’ requirement
2. to report to OJK regarding the progress of fulfillment of ‘free float’ requirement
<table>
<thead>
<tr>
<th>Shares listed and traded on the IDX</th>
<th>Shares listed and traded on the IDX but which have not been trading on the IDX or have been suspended by the IDX during the last 90 days or more</th>
<th>Shares neither listed nor traded on the IDX</th>
</tr>
</thead>
</table>
| **Acquisition of shares from existing shareholders through mandatory tender offer** | Tender offer price is the greater of:  
- an average of the highest market prices during the 90 days prior to the announcement of the negotiation process or (if there has been no such announcement) the announcement of the acquisition; and  
- the price paid by the acquirer in connection with the acquisition. | Tender offer price is the greater of:  
- the takeover price which has been offered; and  
- the fair market price as stipulated by an appraiser appointed by the new controlling party making the tender offer. |
| **Acquisition of shares from existing shareholders through voluntary tender offer** | Tender offer price is the greater of:  
- the highest price of any voluntary tender offer which has been submitted in the period of 180 days prior to the announcement of this voluntary tender offer; and  
- the average of the highest daily market prices during the last 90 days prior to the announcement. | Tender offer price is the fair market price as stipulated by an appraiser. |
| **Acquisition through the issue of new shares** | Issue price of the shares cannot be greater than an average of the highest market prices of daily trading on the IDX during the last 90 days prior to the announcement of the negotiation process or, if there has been no such announcement, the announcement of the acquisition. | Issue price of the shares cannot be greater than the fair market price of the shares as determined by an appraiser. |
According to the 2012 IDX Statistics, the Jakarta Composite Index recorded a growth of 12.94% by the end of 2012, which put the IDX in the 8th place as the best growth stock market in the Asia Pacific. The positive growth is expected to continue in 2013. In 2012, the IDX recorded an average frequency of 122,000 daily share transactions, while the total trading for market capitalization was 76.08%. Moreover, in December 2011 Indonesia regained its investment grade status from Fitch, which upgraded the country’s sovereign credit rating to BBB-. In January 2012, Moody’s followed suit, upgrading Indonesia to Baa3 from Ba1. While concerns regarding inflation and the risk of capital flight still remain, Bank Indonesia projected that inflation will be 4.5% for 2013 and continued work on deepening capital markets through attracting more local investment will address concerns of capital flight.

IDX
IDX organizes and provides the system and the facility to bridge the seller and the buyer of shares for the purpose of trading. IDX determines the regulations concerning the members, listings, trading, clearing, settlement and other matters related to stock exchange activities. A proposed IDX regulation must be approved by OJK before becoming effective. IDX is also required to maintain an inspection unit assigned to periodically investigate members and their activities on the IDX.

Listing Requirements
A prospective listed company must fulfil the following requirements to be listed on the IDX:

- the legal entity is a limited liability company;
- a registration statement has been submitted to OJK and is in effect;
- the company has an independent commissioner or commissioners (constitutively at least 30% of the board of commissioners);
- the company has at least one unaffiliated director;
- the company has an audit committee;
- the company has a corporate secretary;
- the nominal value of prospective listed company’s listed shares must be at least IDR 100; and
- the proposed directors and commissioners of the company have a good reputation.

The prospective listed company may list its shares on the Main Trading Board or the Development Trading Board. Below are the differences in the requirements for listing on the two boards:

<table>
<thead>
<tr>
<th>No.</th>
<th>Matters</th>
<th>Main Trading Board</th>
<th>Development Trading Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Company’s operations</td>
<td>36 months</td>
<td>12 months</td>
</tr>
<tr>
<td>2.</td>
<td>Financial statements</td>
<td>Have been audited at least 3 years</td>
<td>Have been audited at least 1 year</td>
</tr>
<tr>
<td>3.</td>
<td>Net tangible assets</td>
<td>IDR 100,000,000,000</td>
<td>IDR 5,000,000,000</td>
</tr>
<tr>
<td>4.</td>
<td>Number of shareholders</td>
<td>At least 1,000 shareholders</td>
<td>At least 500 shareholders</td>
</tr>
<tr>
<td>5.</td>
<td>Minimum number of shares owned by minority shareholders</td>
<td>100,000,000 shares or at least 35% of total issued shares</td>
<td>50,000,000 shares or at least 35% of total issued shares</td>
</tr>
</tbody>
</table>

PT Kustodian Sentral Efek Indonesia (KSEI)
KSEI is a company domiciled in Jakarta with a business license to serve as a party convening central custodian activities for custodian banks, securities companies and other parties. Based on an agreement with IDX, KSEI provides central custodian services and settlement of IDX transactions.
Financial Services Authority (OJK)

OJK is intended to be an institution capable of addressing the new challenges facing Indonesia’s financial services sector while continuing the regulatory and supervisory tasks formerly assigned to Bank Indonesia, BAPEPAM-LK (which it will be replacing) and the Ministry of Finance, in a gradual transfer of authority. OJK began regulating the capital markets, insurance companies, securities companies and multi-finance companies on 1 January 2013. OJK will begin monitoring banks on 1 January 2014.

OJK is designed to act as a “one stop” regulatory service for both bank and non-bank financial institutions, covering the banking, capital markets, insurance and other financial services sectors and its authority is intended to be broader than its predecessors. OJK is authorised to investigate corruption in the financial services sector, to administer penalties, conduct investigations and initiate prosecutions and has the power to revoke licenses (which could effectively end the business activities in Indonesia of a financial services provider). OJK is also intended to play a role in consumer protection in the financial services industry, to address consumer service complaints and to make legal claims on behalf of consumers.

Despite this expanded authority, the OJK is expected to cooperate with other government agencies, such as the Ministry of Finance and Bank Indonesia. Once the authority of Bank Indonesia has been transferred to OJK at the end of 2013, Bank Indonesia’s main task will be to supervise the stability of the monetary and payment systems, and the authority to supervise commercial and Sharia banks will be completely transferred to OJK.1

Bond Market

The Indonesian bond market consists primarily of government bonds and corporate bonds. Domestic issuances of asset-backed securities are also permitted, under a specific regulatory framework. Additionally, the government has promulgated regulations to allow the issuance of municipal bonds.

The national government has issued various bonds with short-, medium- and long-term maturities in both Rupiah and foreign currencies. Since 2008, the national government has also issued State Sharia Securities (Surat Berharga Syariah Negara or SBSN), which are bonds issued under Sharia principles in either Rupiah

1 Bank Indonesia has given their employees the option to choose whether they would like to stay at Bank Indonesia or move to OJK.
or a foreign currency. Issues of SBSN have utilized a *sukuk ijarah* sale and leaseback structure.

Corporate bonds primarily consist of conventional corporate bonds, Medium Term Notes (MTN), corporate *Sukuk* and convertible bonds. Corporate issuers have also previously tapped the international capital markets through offshore bond issuances through offshore special purpose entities.

Municipal bonds (bonds issued by the regional governments) are intended to be implemented in accordance with regional autonomy principles and to facilitate the funding of regional infrastructure projects. Municipals bonds are intended to have a maturity of one-year or more, to be denominated in Rupiah and to be offered to the Indonesian public through the domestic capital markets. The bonds may be secured by collateral consisting of the regional project to be funded by the bond issuance. The national government does not, however, guarantee these bonds.

**Information disclosure**

Public companies that are planning to issue securities and/or are considering listing on the IDX are required to submit financial statements and other disclosure documents to OJK and make them available to the public. OJK, as the capital markets regulator, sets the minimum standards for a public company’s financial statements, which include annual and mid-year financial statements and quarterly reports on the use of funds.

Financial Statements must be made in accordance with the Indonesian Financial Accounting Standards (*Pernyataan Standar Akuntansi Keuangan* or PSAK) established by the Indonesian Institute of Accountants (*Ikatan Akuntan Indonesia* or IAI), and other accepted accounting practices in the Indonesian capital markets, and include the following components:

- **Balance Sheet:** contains assets, liabilities and equity on a particular date. Current assets and liabilities and non-current assets and liabilities are to be presented separately, except for companies in certain regulated industries. Current assets should be presented in the order of their liquidity while liabilities should be presented in the order of their maturity.

- **Income Statement:** summarises the company’s business activities for a given period and shows net income or loss from business activities or other activities. The statement should include net sales or revenue, cost of goods sold, gross profit (or loss), operating expenses, operating profit (or loss), other income (or expenses), portion of associated company profit (or loss), profit (or loss) before income taxes, income taxes, profit (or loss) from normal activities, extraordinary items, profit (or loss) before minority interest, net profit (or loss) from minority interests in subsidiary companies, net income (or loss), basic earnings (or loss) per share and diluted earnings (or loss) per share.

- **Statement of Changes in Stockholders Equity:** shows any changes in the company’s equity either increasing or decreasing net assets during the reporting period.

- **Cash Flow Statement:** shows cash inflows and outflows during the period, classified by operating, investing and financing activities.

- **Notes to Financial Statements:** explain the general description of a company, the accounting policies, the descriptions of accounts in the financial statements and other significant information.

Consolidated financial statements are to include all subsidiary companies controlled by the parent company. Control is deemed to exist when the parent company directly owns, or indirectly owns through subsidiaries, more than 50% of voting shares of a company, or if the parent company meets one of the following conditions:

- the company holds more than 50% of voting rights by virtue of an agreement with other investors;

- the company has the power to direct and determine financial and operational policies based on the articles of association or an agreement;

- the company has the power to appoint or dismiss a majority of the members of company management; or

- the company has the power to direct the majority of voting rights in a management meeting.

Subsidiaries should, however, be excluded from consolidation if:

- control is intended to be temporary because the subsidiary’s shares are acquired and held with a view to its subsequent disposal in the near future; or

- the subsidiary company is under severe long-term restrictions which significantly impairs its ability to transfer funds to the holding company.
Each Indonesian public company is also required to disclose any occurrence that may affect the value of the company’s stock, by providing public notice and notice to OJK, within two working days of the occurrence. The following occurrences require disclosure:

- merger, share purchase, consolidation or establishment of a joint venture company;
- stock split or dividend;
- income from extraordinary dividend;
- acquisition or loss of an important contract;
- significant new product or innovation;
- change in control or significant change in management;
- call for the purchase or redemption of debt securities;
- sale of a material amount of securities to the public or in a private placement;
- purchase, or loss from the sale of, a material asset;
- relatively important labour dispute;
- important litigation against the company and/or the company’s directors or commissioners;
- an offer to purchase securities of another company;
- replacement of the company’s auditor;
- replacement of a trustee of the company’s debt obligations; and
- a change in the company’s financial year.

**Private placement**

Selling of securities in a private placement may be carried out in Indonesia by means of direct negotiation between the company and certain prospective investors. A domestic capital markets transaction may constitute a private placement if it is not offered to Indonesian citizens through the mass media, is offered to 100 parties or less and sold to 50 parties or less.

Private placement of equity of a public company may be conducted through a capital increase without pre-emptive rights of existing shareholders, with the approval of the general meeting of shareholders, if the following conditions are fulfilled:

- within two years such capital increase will not exceed 10% the company’s paid up capital; or
- the primary purpose of the capital increase is to improve the financial position of a company that is experiencing one of the following conditions:
  - a bank that has received a loan from Bank Indonesia or another government institution in the amount equal to more than 100% of the company’s paid in capital or another condition that may result in the restructuring of the bank by the government institution;
  - a non-bank company that has negative net working capital and has obligations greater than 80% of the company’s assets at the time the general meeting of shareholders approves the capital increase; or
  - the company is in default or is unable to avoid default on its obligations to a non-affiliated lender, and such lender has agreed to accept shares or convertible bonds of the company in settlement of the loan.

The company must notify OJK of the proposed private placement at least five working days prior the execution of the capital increase without pre-emptive rights as well as issuing an announcement to the public. Within two working days of the completion, the company must notify OJK and the public of the results, including information about quantity and stock price.
Initial public offering (IPO) process
A company that intends to conduct an initial public offering in Indonesia is required to submit a registration statement and supporting document to OJK. The issuer is responsible for the completion and correctness of the information which is disclosed in such documents (except for specific information such as the offering price and the date of the registration’s effectiveness, which may not be determined at the time of submission). After submission of the registration statement, the issuer may be requested to submit additional information and/or to amend the registration statement.

The issuer must announce a summary of the prospectus for the IPO in at least one Indonesian nationally circulated daily newspaper within two working days from the receipt of permission to do so from OJK and must provide the OJK with evidence of such announcement within two working days of the same.

An issuer may also conduct an offer using a preliminary prospectus (for purposes of book building), with OJK’s written authorisation.

Effectiveness of Registration Statement
The issuer’s registration statement will become effective as follows:

- Based on the passage of time:
  - 45 days since the complete registration statement is received by OJK, where all criteria relating to a registration statement for a public offering has been fulfilled; or
  - 45 days since the date of the last amendments were delivered to OJK or the last date of any requirements from OJK having been fulfilled.

- Based on statement from OJK that there is no further change and no additional information needed.

After the effectiveness of the registration statement, the issuer is obliged to:

- provide the required prospectus as a part of a registration statement to the public or prospective buyers;
- submit the prospectus in hard copy (x5) and soft copy to OJK; and
- announce if there is any change and/or addition to the summary prospectus in at least one nationally circulated newspaper within one working day of the effectiveness of the registration statement, and submit such evidence to OJK within two working days after its announcement.

Period of Public Offering, Allotment and Public Offering Report
The issuer is required to conduct the IPO within two working days from the registration statement’s effectiveness; the public offering period is to be within one to five working days and the allotment of shares must be accomplished within two working days after the end of the public offering period. Afterwards, the distribution of such shares is required to be conducted within one working day after the date of allotment.

The underwriter or the issuer is required to submit a report regarding the public offering to OJK within five working days from the date of the shares allotment. After the submission, the underwriter or the issuer (if the issuer is not using an underwriter) must appoint a public accountant to conduct a specific examination of the public offering, which must be received by OJK within 30 days from the end of the public offering period.

If the offered shares will be listed on the IDX, the listing must be conducted within one working day after the date of the shares allotment.
Diagram 5: IPO process

1. Request for changes / additional information
2. Permission for the publication of the Prospectus Summary
3. Announcement of the Prospectus Summary
4. Submission of pricing information and other disclosure
5. Announcement of revised / additional information for Prospectus Summary
6. End of public offering period
7. Corporate action report
8. Postponement
9. Rationing
10. Listing
11. Refund / distribution of securities
12. Report of public offering result
13. (5 working days)

Process in issuing Company
Process in Financial Services Authority (Otoritas Jasa Keuangan - OJK)
Time frame for the IPO:

<table>
<thead>
<tr>
<th>Action</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of registration statement</td>
<td>N/A</td>
</tr>
<tr>
<td>Publication of abridged prospectus in at least one daily Indonesian language national newspaper</td>
<td>Within two working days after receiving statement from OJK</td>
</tr>
<tr>
<td>Submission of copy of publication of abridged prospectus to OJK</td>
<td>Within two working days of publication of abridged prospectus in the newspaper</td>
</tr>
<tr>
<td>Registration statement becomes effective</td>
<td>● Based on the passage of time:</td>
</tr>
<tr>
<td></td>
<td>− 45 days since the complete registration statement is received by OJK, where all criteria relating to registration statement in order of public offering has been fulfilled; or</td>
</tr>
<tr>
<td></td>
<td>− 45 days since the date of the last amendments were delivered to OJK or the last of any requirements from OJK have been fulfilled.</td>
</tr>
<tr>
<td></td>
<td>● Based on statement from OJK that there is no further change and no additional information needed.</td>
</tr>
<tr>
<td>● Last day for making the prospectus available to the public or prospective investors</td>
<td>Within one working day of the effective date of the registration statement</td>
</tr>
<tr>
<td>● Announcement in at least one daily Indonesian language newspaper of revisions and/or additional information to the abridged prospectus</td>
<td></td>
</tr>
<tr>
<td>Submission of copy of the publication of revisions and/or additions to the abridged prospectus to OJK</td>
<td>Within two working days of publication in the newspaper of revisions and/or additions to the abridged prospectus</td>
</tr>
<tr>
<td>Conducting the IPO</td>
<td>Within two working days after the registration statement becomes effective</td>
</tr>
<tr>
<td>Public offering period</td>
<td>Within one to five working days</td>
</tr>
<tr>
<td>Allotment of shares</td>
<td>Within two working days after the end of the public offering period</td>
</tr>
<tr>
<td>Distribution of shares</td>
<td>Within one working day after the date of allotment</td>
</tr>
<tr>
<td>Shares listed on the IDX</td>
<td>One working day after the date of shares allotment</td>
</tr>
<tr>
<td>Submit report of public offering to OJK</td>
<td>Within five working days after the date of shares allotment</td>
</tr>
<tr>
<td>Conduct a specific examination of public offering and submit to OJK</td>
<td>Within 30 days after the end of the public offering period</td>
</tr>
</tbody>
</table>
Rights issue
In the event that an Indonesian public company intends to increase its capital, the existing shareholders of the public company have a pre-emptive right to acquire a portion of the newly issued securities in proportion to the percentage of their respective current shareholding.

In the event the public company issues warrants, the total number of warrants and circulated warrants cannot exceed 35% of total of paid up capital at the date the registration statement is submitted.

Rights issues include a stand-by buyer which has the obligation to purchase any remaining shares that are not purchased by the existing shareholders or the public, under the same price and same terms. The party who acts as a stand-by buyer is required to provide financial statements (for a company) or checking account statement (for an individual) which shows positive earnings and its capability to act as a stand-by buyer.

Diagram 6: Rights issue process

1 Ex right is the right to purchase shares without the right to purchase additional shares at a price below the current market price.
2 Cum right is the right of an existing shareholder to buy new shares, typically at a price lower than the current market price of the shares in question.
The time frame for a rights issue:

<table>
<thead>
<tr>
<th>Action</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submission of registration statement to OJK</td>
<td>At least 28 days prior to the general meeting of shareholders</td>
</tr>
<tr>
<td>Publication of information on the rights issue in at least one daily</td>
<td></td>
</tr>
<tr>
<td>Indonesian language national newspaper</td>
<td></td>
</tr>
<tr>
<td>Prospectus made available to shareholders</td>
<td></td>
</tr>
<tr>
<td>Submission of copy of publication of information on rights issue to</td>
<td>Within two working days of publication in the newspaper</td>
</tr>
<tr>
<td>OJK</td>
<td></td>
</tr>
<tr>
<td>Announcement in at least one daily Indonesian language newspaper of</td>
<td>At least two days prior to the general meeting of shareholders</td>
</tr>
<tr>
<td>revisions and/or additions to the information on the rights issue</td>
<td></td>
</tr>
<tr>
<td>Registration statement is declared effective</td>
<td></td>
</tr>
<tr>
<td>General meeting of shareholders</td>
<td></td>
</tr>
<tr>
<td>Recording date</td>
<td>Eight working days after general shareholders meeting</td>
</tr>
<tr>
<td>Distribution of evidence of rights</td>
<td>At least one working day after recording date</td>
</tr>
<tr>
<td>Trading and exercise of rights period</td>
<td>Between five and 30 days after the distribution date</td>
</tr>
<tr>
<td>Issuance of new securities</td>
<td>Within two working days of the exercise of the rights</td>
</tr>
<tr>
<td>Payment for additional securities ordered</td>
<td>One working day after the date of payment for additional securities</td>
</tr>
<tr>
<td>Refund of payment for additional securities ordered</td>
<td>Within two working days of the allocation date</td>
</tr>
</tbody>
</table>
Banking and lending

**Bank Indonesia**

Bank Indonesia is Indonesia’s central bank and primary banking authority. Bank Indonesia is intended to be an independent state agency free from interference from other governmental bodies unless expressly provided otherwise by law. Bank Indonesia’s primary objective is to maintain the stability of the Rupiah. In order to achieve this objective, Bank Indonesia prescribes and implements monetary policy including through:

- open market operations in the Rupiah and foreign currency money markets;
- setting the discount rate;
- determining minimum required reserves and credit for financing arrangements; and
- regulating and supervising Indonesia’s payment system and banking system (including licensing for, and imposition of sanctions on, banks).

From 1 January 2014, Bank Indonesia’s role as the primary regulator of the banking industry will be exercised by OJK.

**Single presence policy and shareholding restrictions**

Bank Indonesia has established a ‘Single Presence Policy’ in respect of Indonesian banks which provides that no single person can own more than 25%, i.e. become a “controlling shareholder,” in more than one Indonesian bank. Based on Bank Indonesia Regulation No.14/24/PBI/2012 of 2012 (PBI 14/24/2012), a controlling shareholder is a person, legal entity or business group that:

- holds 25% or more of shares issued by the bank and has voting rights; or
- exercises control of the bank either directly or indirectly.

However, there are exceptions to the ‘Single Presence Policy’. A party may be a controlling shareholder in more than one Indonesian bank if:

- it is a controlling shareholder in one conventional bank and one bank based on Sharia principles;
- it is a controlling shareholder in two banks and one of the banks is a joint venture bank; or
- a bank holding company is established (such that more than one bank can be indirectly owned).

Ownership structures that do not comply with the ‘Single Presence Policy’ will be the subject of compulsory restructuring (e.g., through divestment, merger/consolidation or establishment of a bank holding company). Bank which complete compulsory restructuring within six months as of 26 December 2012 may enjoy some incentives as provided in Article 4 of such PBI.

Pursuant to Bank Indonesia Regulation No.14/8/PBI/2012 (PBI 14/2012) concerning Commercial Bank Share Ownership, the maximum amount of bank share ownership for a single shareholder depends on the category of shareholder, as follows:

- for banks and non-bank financial institutions, 40% of a bank’s capital (provided that Bank Indonesia may approve a higher amount);
- for non-financial institutions, 30% of a bank’s capital; and
- for individual shareholders, 20% of a bank’s capital.

This maximum amount of share ownership does not apply to the central government or any agency that has the function of handling and/or rescuing a bank. Furthermore, a bank shareholder who meets the criteria as a controlling shareholder will be subject to PBI 14/24/2012 in addition to PBI 14/2012.

Any prospective controlling shareholder who is a citizen of a foreign country and/or is a legal entity domiciled abroad must meet the following additional requirements:

- the person or entity is committed to supporting the economic development of Indonesia by owning shares in the bank;
- the person or entity has obtained recommendation from the supervisory authority of the country of origin (for financial institutions); and
- the person or entity has ranked at least: (i) one level above the lowest investment grade, for banks; (ii) two levels above the lowest investment grade, for non-bank financial institutions; and (iii) three levels above the lowest investment grade, for non-financial institutions.

**Offshore financial obligations**

Indonesia has imposed various reporting and filing obligations on Indonesian companies obtaining debt financing from sources outside the country. The precise scope of these obligations varies from regulation to regulation, but generally loans, notes, bonds and finance leases would be reportable obligations, as would guarantees in some cases.
These requirements include general reporting obligations to Bank Indonesia regarding the company’s annual offshore borrowing plan, as well as transaction-specific reporting requirements to Bank Indonesia, the Ministry of Finance and the Offshore Commercial Loan Team (Tim Pinjaman Komersial Luar Negeri or PKLN Team). In the case of the transaction-specific reports, the Indonesian obligor has been required, in the first report, to include copies of the underlying transaction documents and thereafter to provide periodic reports on the realisation of the loan (i.e. drawings and repayment).

These reporting requirements are administrative in nature and are imposed on the borrower. There are penalties that may be imposed on a borrower that fails to comply.

Additionally, there have been several court cases where a borrower’s failure to comply has resulted in a court invalidating the underlying loan agreement. Although these decisions have been criticised as incorrect applications of the regulations, lenders are well advised to verify submission of the requisite reports as conditions precedent to the first drawdown and to require completion of all periodic reports (as either conditions subsequent or pursuant to the general undertakings).

Offshore borrowings for public infrastructure projects (including those being implemented as a BOT or PPP) have required the approval of the PKLN Team. In principle, this approval is intended for project borrowings that could affect the state budget. The approval process can be time consuming and may require a presentation regarding the proposed project structure and coordination with the other government stakeholders (including any state-owned enterprises involved).

**Foreign exchange**

Bank Indonesia has issued several regulations relating to foreign exchange activities. Bank Indonesia Regulation (Peraturan Bank Indonesia or PBI) Number 14/25/PBI/2012, provides that exporters must receive the cash proceeds from exporting goods through Indonesian foreign exchange banks. In addition the regulation requires that the drawdown of foreign currencies under term facilities not used for refinancing, and certain other types of credit obligations, made available by offshore creditors, must be routed through a foreign exchange bank and that these activities must be reported to Bank Indonesia.

Foreign exchange banks for the purpose of the regulation are banks which have acquired a letter of appointment from Bank Indonesia to conduct banking business in foreign currencies, including branch offices of a foreign bank in Indonesia, but excluding overseas branch offices of a bank headquartered in Indonesia.

Breach of the regulation carries penalties: for exporters the sanction imposed is a financial penalty of 0.5% of the nominal value of export proceeds not received through a foreign exchange bank, subject to a maximum of IDR 100,000,000. For drawing of foreign currency debt in breach of the regulation, the sanction imposed is a financial penalty of IDR 10,000,000 for each withdrawal.

Further detail on the foreign exchange regime is contained in PBI Number 13/21/PBI/2011, which specifically regulates the obligations of banks to report their foreign exchange activities to Bank Indonesia.
Currency law
Indonesia’s Law No. 7 of 2011 (the Currency Law) is intended to encourage the use of Rupiah in financial transactions conducted in Indonesia in order to increase confidence in the Rupiah and reduce the use of foreign currency in Indonesia. The Currency Law provides that, subject to certain exceptions, Rupiah must be used in payment transactions, settlement of other monetary obligations and any other financial transactions conducted within the territory of the Republic of Indonesia. The Currency Law also prohibits a party from refusing Rupiah in these cases unless there is doubt as to the authenticity of the Rupiah or the concerned parties have agreed in writing to make such payment or settle the liabilities using foreign currency.

The following types of transactions are exempt from the requirements:

- certain transactions for the purpose of implementing the state budget;
- grants received from overseas or grants given overseas;
- international trade transactions;
- bank deposits denominated in foreign currencies; and
- international financing transactions.

Failure to comply with the Currency Law may result in monetary penalties (up to Rupiah 200,000,000) and/or imprisonment of up to one year.

Accounting and auditing
Indonesian General Accepted Accounting Principles or (Pernyataan Standar Akuntansi Keuangan or PSAK) must be used by any Indonesian limited liability company as the basis of their financial statements.

Under the Company Law, the board of directors has an obligation to provide the company’s financial report to be audited by an independent auditor where:

- the company activities are collecting and/or managing public funds;
- the company issues acknowledgements of indebtedness to the public;
- the company is a publicly listed company;
- the company is a public and state-owned company;
- the company has assets and/or total business turnover with minimum total value IDR 50,000,000,000; or
- as otherwise required mandatory by law.

The accounting standards applicable to public companies are specified by applicable BAPEPAM-LK regulations.

Differences between PSAK and IFRS
Since 1994, Indonesia’s accounting profession, through the IAI, has committed to harmonising PSAK with the International Financial Reporting Standards (IFRS) (previously known as International Accounting Standards), as developed by the International Accounting Standards Board. Consequently, the majority of the PSAK issued since 1994 have been based on IFRS, resulting in similar provisions. However, some differences between IFRS and PSAK remain.

Accounting professions in Indonesia
Indonesia has specific licensing requirements for public accounting firms, which are overseen by the Minister of Finance. Foreign public accounting firms must enter into a cooperation arrangement with an Indonesian public accounting firm to operate in Indonesia. There are various other restrictions imposed on foreign accountants. Each of the “big four” accounting firms maintains a presence in Indonesia. There is a separate licensing regime for tax consultants, which is also overseen by the Minister of Finance.

Anti-corruption laws
Entities and individuals doing business in Indonesia that are subject to anti-corruption legislation in other jurisdictions should ensure that their actions in Indonesia do not violate the laws of those other jurisdictions. The Foreign Corrupt Practices Act of 1997 (FCPA), the principal anti-corruption legislation in the United States, applies to US citizens, nationals and residents as well as corporations that are required to report to the US Securities Exchange Commission, have a class of securities registered under the Securities and Exchange Act, are incorporated under US laws, or have their principal place of business in the US.

The FCPA prohibits bribes to foreign government officials to obtain or retain business. Besides the FCPA, companies need to be mindful of the OECD Anti-Bribery Convention, the UK Anti-Bribery Act and similar national laws to the extent they may be subject to them.
In an effort to combat corruption, Indonesia has instituted numerous legal and institutional reforms. Government bodies that are involved in combating corruption include:

- **Corruption Eradication Commission (Komisi Pemberantasan Korupsi or KPK):** an independent anti-corruption supervisory institution which was established in 2002. KPK has the authority to initiate investigations but has limited capacity to act on the numerous reports that it receives. Among the tasks of the KPK is the annual collection of asset declarations from government officials.

- **National Ombudsman Commission (Komisi Ombudsman Nasional):** established in 2000, receives reports and has the authority to initiate investigations of irregularities in the public sector.

- **State Audit Board (Badan Pemeriksa Keuangan or BPK):** a high state institution in Indonesia with authority to examine the management and liabilities of various governmental institutions. Based on the 1945 Constitution, BPK is an independent body and its members are appointed by the House of Representatives with input from the Regional House of Representatives and legalized by the President. Findings from BPK investigations are reported to the legislature.

- **Indonesian Financial Transaction Report and Analysis Centre (Pusat Pelaporan dan Analisis Transaksi Keuangan or PPATK):** PPATK was established in 2003 to prevent money laundering in Indonesia. The PPATK receives and analyses suspicious transaction reports, cash transaction reports and other information as well as distributing the analysed reports to law enforcement agencies.

**Secured transactions and security issues**

Indonesian law allows for the encumbrance of land and buildings (referred to as immovable objects), movable objects and certain intangibles (including receivables, insurance proceeds and shares in a company) as security for a payment obligation. Contractual rights, leaseholds, concessions and licenses, among other things, cannot be encumbered by security under Indonesian law. For contractual rights and powers that cannot be encumbered by security, under market practice, a lender may request that the borrower grant the lender such rights pursuant to contract (by a conditional novation agreement) and/or power of attorney.

Both a mortgage on land and buildings (hak tanggungan) and a fiduciary security interest (fiducia) are created by a public filing (with the relevant Land Office or fiduciary registration office respectively). A mortgage on land and buildings may encumber the right of ownership, the right to cultivate, the right to build and the right to use of state land, together with any objects relating to the relevant land rights (for instance, plants and buildings on the relevant land).

A fiduciary security interest may encumber movable objects (excepting aircraft and registered maritime vessels over a certain size, each of which is subject to specific laws), certain intangibles (including proceeds, receivables, insurance claims and shares in a company), and land and buildings that are not eligible for encumbrance by a mortgage.

The balances on bank accounts may be controlled either by assignment of the account (which is merely a contractual arrangement which will not prefer the beneficiary over unsecured creditors of the debtor on the debtor’s insolvency) or by the creation of a pledge. In order to achieve a first priority security interest over a bank account via pledge, the creditor (or its agent) must have control of the account and notice must be given to (and acknowledged by) the bank with which the account is held. A secured creditor may also request the delivery of a power of attorney to operate the account following the occurrence of breach of the terms of the financing.

Maritime vessels with gross volume of at least 20 cubic metres may be subject to a registered ship mortgage (hypothec), and Indonesia has ratified the International Convention on Maritime Liens and Mortgages and the International Convention on Arrest of Ships. Indonesia has also ratified the Cape Town Convention on International Interests in Mobile Equipment, and Indonesian law will recognise an international interest over an eligible aircraft created by a security agreement, title reservation agreement or leasing agreement governed by Indonesian law or foreign law, as chosen by the parties.

A pledge of a tangible object is created by physically delivering the collateral to the secured party. In the case of shares, a pledge is created, for a private company by making a notation of the share register. For a public company, a pledge is created by registration and acknowledgment of the pledge by the company’s share registrar and evidence of ‘blocking’ of the pledged
shares by KSEI, the Indonesian central securities custodian. Such pledges are generally reinforced by the granting of a power of attorney by the pledgor to the pledgee to assist the process of the disposal of the shares by the pledgee on enforcement.

The primary remedy under an Indonesian security interest is the right to sell the collateral through a public auction (except in the case of ships and aircraft, where additional remedies are provided pursuant to the specific treaties and laws). Legally, this right may be exercised without having to obtain a court order (parate eksekusi), however, in practice, the applicable auction house may require a court order to initiate an auction. Alternatively, the collateral may be privately sold pursuant to an agreement between the creditor and the debtor reached after a default on the underlying debt. For a land and building mortgage or fiduciary security interest, the parties must also fulfil certain publicity requirements before concluding a sale.

In insolvency proceedings a secured creditor’s right to enforcement becomes subject to a stay. The secured creditor retains its right to be repaid from the proceeds of the sale of its collateral and may participate in the proceedings as an unsecured creditor to the extent that the proceeds are insufficient to discharge its claim against the debtor.

**Lender’s security and step-in rights**

Indonesian law does not provide an express basis for lender step-in rights as a remedy in a default. Except for the right to payment, contractual rights generally cannot be encumbered, and a secured creditor does not have the capacity to appoint a receiver for or otherwise manage collateral after a default.

Certain rights can, however, be granted by contract. Market practice has developed such that a lender may request that a borrower grant the equivalent of step-in rights pursuant to agreement or power of attorney. Rights granted pursuant to such instruments would not be considered security interests, would not be enforceable against third parties that have not consented to the grant and could be susceptible to rejection (by a curator or judge) in insolvency proceedings involving the borrower. Additionally, the Indonesian Civil Code provides that powers of attorney automatically terminate upon the insolvency of the grantor (although typically a borrower will be required to waive the relevant provisions of the Civil Code).

Indonesia does not yet have regulations or government guidelines relating to how lenders’ step-in rights should be granted and exercised in PPP/public infrastructure projects, how these rights should interact with any step-in rights of the public body initiating the project and how such a project in default should be transferred to new investors (by re-tender or otherwise). Previous projects have attempted to deal with these issues through contractual terms only.

**Bankruptcy**

Prior to 1998, Indonesia’s bankruptcy law was the seldom used colonial Bankruptcy Ordinance, first enacted in 1906. During the Asian Financial Crisis, in connection with reforms required by the International Monetary Fund, new bankruptcy regulations were put in place, first by government regulation in lieu of law and later by statute. These regulations were superseded again in 2004 to correct perceived problems and institute further reforms.

Indonesia recognises two forms of court-supervised insolvency, bankruptcy and suspension of payments (moratorium). Some of the differences between the two are set out in the table below:

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Bankruptcy</th>
<th>Suspension of payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debtor’s assets</td>
<td>Managed by curator, supervised by judge</td>
<td>Jointly managed by administrator and debtor</td>
</tr>
<tr>
<td>Stay</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Voting</td>
<td>Unsecured creditors*</td>
<td>All creditors</td>
</tr>
<tr>
<td>Appeal</td>
<td>Declaration of bankruptcy may be subject to direct review by the Supreme Court</td>
<td>Court termination of process results in the debtor being declared bankrupt with no further right to review</td>
</tr>
</tbody>
</table>

* Secured creditors are entitled to vote on matters in bankruptcy only to the extent of any unsecured debt (for example, for a deficiency in the value of its collateral relative to the debt owed to it).

Generally, either a debtor, or one or more of its creditors, can submit a petition to commence proceedings. There are additional requirements for commencing insolvency proceedings in respect of certain types of debtors, for example:
● for a company to voluntarily commence proceedings, 3/4 of shareholders with voting rights must approve this at a shareholder meeting with the requisite quorum present.

● for a state-owned enterprise engaged in a sector of public interest, only the Ministry of Finance can commence proceedings (the relevant statutory elucidation refers only to Perum, although there is at least one case where this provision was construed to refer to Persero as well).

● for an insurance company, reinsurance company or pension fund, only the Ministry of Finance can commence proceedings.

● for a bank, only Bank Indonesia can commence proceedings.

● for certain specified financial institutions, only Financial Services Authority (OJK) can commence proceedings.

Indonesian law recognises the Pauline action (actio Pauliana) as a basis to set aside preferences or fraudulent transfers. This concept has been included in the insolvency statute. Acts that may be set aside include the following, if concluded one year prior to the bankruptcy adjudication:

● contracts where the value of the obligation on the part of the debtor far exceeds the value of the obligation on the part of the counterparty.

● if the debtor is a legal entity, acts performed for the benefit of a director, a member of management, a spouse or certain other relative of a director or member of management, and certain affiliates.

Repatriation of capital
Pursuant to Indonesia’s Investment Law, an investor is permitted to transfer foreign currency from Indonesia, including for repatriation of the following:

● capital;

● profit, bank interest, dividends and any other revenue;

● funds required for purchasing raw materials and support materials, intermediate products or final products and reimbursement of capital goods in order to secure the investment;

● additional funds required for investment financing;

● payments of royalties or interest;

● income of any foreign individuals working in any investment companies;

● the proceeds of any sale or liquidation of an investment;

● compensation for any loss;

● compensation for any takeover;

● payment made for technical assistance, payable costs for technical service and management, payment made under project contracts and payment for intellectual property rights; and

● proceeds of an asset sale.

Governmental authorities, such as Bank Indonesia, may impose certain reporting obligations on the repatriation of capital.

Contract formation under the Civil Code
Under the Indonesian Civil Code, a valid contract requires consensus between the parties, legal capacity to enter into an agreement, a certain object and a lawful cause. The first two conditions are considered to be subjective conditions and the other two to be objective conditions.

In the event the objective conditions (certain subject and lawful purpose) are not fulfilled by the parties then the agreement is null and void. This means the contract was never formed. In the event a subjective condition (consent and competence) is not fulfilled, the agreement is voidable. This means the affected party has the right to cancel the agreement.

Notarial deeds
Indonesian law requires certain documents to be in the form of a notarial deed or a land deed to be effective. A notarial deed is a document prepared and executed by a licensed Indonesian notary based on the authorisation of the parties to the agreement. The notarial deed is distinct from other forms of document attestation that may be provided by a notary, such as legalization of signatures, documentation registrations or ‘true-copy’ certifications.

To complete a notarial deed, the parties (or their authorised representatives) must physically appear before the notary in Indonesia and the notary must be provided with documentation which the notary deems appropriate to verify authorisation to complete the transactions intended by the deed.
Such documentation may include powers of attorney authorising the parties’ representatives, identification documentation of the representatives (passport or national identification card), articles of association or constituent documentation of the parties (if they are companies or other entities) and any governmental approvals required for the transaction. There is a presumption in favour of the truth of the content of a notarial deed in Indonesian court proceedings.

A land deed is conceptually the same as a notarial deed, except that a land deed must be prepared and executed by a PPAT (Pejabat Pembuat Akta Tanah or Official Certifier of Land Deeds).

The following documents are required to be executed in the form of a notarial deed or, in the case of land and building-related documentation, a land deed:

- a deed of establishment of an Indonesian company;
- an amendment to the articles of association of an Indonesian company which changes the company’s:
  - name and/or domicile;
  - purpose and objective and business activities;
  - period of incorporation;
  - capital structure such that the amount of the authorised capital is increased or the subscribed and paid-up capital is decreased; or
  - status from private company to a public company or vice versa;
- an instrument transferring a controlling equity stake in an Indonesian company;
- a grant of a fiduciary security interest;
- instruments conveying land and buildings;
- mortgages on land and buildings; and
- a power of attorney to impose a mortgage on land or buildings.

The following documentation is also commonly executed in the form of a notarial deed:

- assignment of receivables or a loan (cessie);
- pledge agreement;
- powers of attorney intended for security; and
- conditional novation agreement intended for security.

**Competition law**

Business competition in Indonesia (antitrust law) is primarily regulated by Law Number 5 of 1999 concerning Restriction of Monopoly Practices and Unfair Business Competition (the **Competition Law**), as administered by the Commission for the Supervision of Business Competition (Komisi Pengawas Persaingan Usaha or KPPU). The Competition Law prohibits certain types of agreements and activities (e.g., formation of a cartel, price fixing etc.) and the abuse of dominant position (e.g. monopoly power). KPPU is vested with the authority to supervise and enforce the Competition Law, including through investigation of potential illegal activities, commencement of administrative enforcement actions and administration of a reporting regime for mergers and acquisitions. KPPU has the authority to impose monetary fines from Rupiah 1 billion to Rupiah 25 billion and/or administrative sanctions, such as business license revocation.

Under the Competition Law, a company is required to report mergers and acquisitions to the KPPU, so long as the transaction meets the thresholds set out below:

- the combined value of the assets of the relevant companies would be more than Rupiah 2.5 trillion (or Rupiah 20 trillion for banks);
- the combined value of the turnover of the relevant companies would be more than Rupiah 5 trillion; and
- there is no affiliation between the relevant companies conducting the proposed merger or acquisition.

The business entity has an obligation to notify KPPU when the merger or acquisition becomes effective (or obtains the approval of the Minister of Law and Human Rights for a private company, or BAPEPAM-LK approval for a public company). The business entity also has a right to consult with KPPU before the merger or acquisition becomes effective (pre-evaluation), under the condition that the company meets the threshold as mentioned above.

The notification must be submitted at the latest 30 (thirty) days after the merger or acquisition is effective. KPPU has the authority to impose monetary fines from Rupiah 1 billion to Rupiah 25 billion to a business entity that does not fulfill the applicable reporting obligations.

**Stamp duty**

Indonesia imposes a nominal stamp duty on documents that are executed in Indonesia or are to be used in Indonesia. The maximum amount of the stamp duty is a small percentage of the value of the document.
duty is Rupiah 6,000. The stamp duty may be affixed before the parties sign the document or, by affixture of the stamp at certain post offices in Indonesia, after the document has been signed.

**Language**

Bahasa Indonesia is the national language of the Republic of Indonesia, based on the 1945 Constitution. The use of Bahasa Indonesia is regulated in Law No. 24 of 2009 Regarding National Flag, and Language, State Symbols and the National Anthem.

Under Law No. 24 of 2009, the use of Bahasa Indonesia is required for, among other things, memoranda of understanding or contracts involving a state institution or government agencies of the Republic of Indonesia, Indonesia private entities or individual Indonesian citizens. The Minister of State-Owned Enterprises issued Circular Letter No. SE-12/MBU/2009 to the boards of the directors of the various state-owned enterprises declaring that state-owned enterprises must comply with the requirement that agreements be in Bahasa Indonesia but that if the contract counterparty is a foreign party then the agreement may be prepared in two languages (Bahasa Indonesia and either the language of the foreign party or the English language). In practice, parties may agree which language will govern in the case of a conflict (except in limited cases, where other laws require that Bahasa Indonesia be the governing language, such as for a deed granting a fiduciary security interest).

**Governing law**

If the parties to a dispute have contracted under the law of a foreign jurisdiction an Indonesian court should adopt the laws of the country in question as the governing law, provided that there is a connection between the parties or the transaction and the chosen law, and so long as the choice of law is not contrary to public policy.

However, in practice courts have chosen not to apply foreign law, often without providing any justification for the refusal. A possible explanation for this refusal may be the unfamiliarity of the Indonesian court system with adjudicating disputes governed by foreign law.
Indonesia’s Basic Agrarian Law (Law No.5 of 1960) (BAL) sets out the framework of land law in Indonesia. The BAL implements the principle under Indonesia’s 1945 constitution that all land and resources are collectively owned by the Indonesian people and the elected officials of Indonesia are charged with the responsibility of utilising the land for the benefit of the people. However, there are types of land title which are attached to the land, which can be privately owned and which permit holders of such titles to utilise the land in various ways.

The BAL and related legislation cover the land that is registered and provide that land and rights in relation to land must be registered. This system of registration is a work in progress and much of the land in Indonesia remains unregistered. This unregistered land is often subject to customary land rights and other unregistered rights and restrictions.

**Type of land rights**

Under the BAL the following types of land rights are of importance to an investor:

- **Right of Ownership** (Hak Milik): similar to freehold ownership; only available to Indonesian citizens; no time limitation.
- **Right to Build** (Hak Guna Bangunan): an interest allowing the holder to build and/or possess a building on the land; available only to Indonesian citizens and Indonesian companies (including PMA companies); 30-year term but can be extended for a further 20 years.
- **Right to Cultivate** (Hak Guna Usaha): issued on land owned by the state; right allows plantation activities; available to Indonesian citizens and Indonesian companies (including PMA companies); 35-year term but can be extended for a further 25 years.
- **Right to Use** (Hak Pakai): right to use land owned by a third party; available to Indonesian citizens, Indonesian companies, foreign entities; 25-year term but can be extended for a further 20 years.

**Acquisition of the land**

A company wishing to obtain a certain piece of land must investigate the title of the land, the willingness of the relevant land right holder(s) to sell the proposed land and the feasibility of obtaining the necessary licences.

**Location permit**

A PMA company must obtain a location permit (Izin Lokasi) in order to acquire a proposed piece of land. With some exceptions, the permit is obtained from the government of the regency or municipality where the land that is to be acquired is situated. A PMA company is also granted an investment license from BKPM which may contain information relating to land usage.

**Title evaluation for registered land**

The National Land Agency (Badan Pertanahan Nasional or BPN) is the national agency which maintains land registration records in Indonesia. The BPN consists of a central land agency and regional land agencies. In order to check the title of the land the applicant must visit the relevant local BPN office, bringing with them the original title certificate. Each regional land agency has records of all registered land listed in its archives. This BPN office will verify the original title certificate against the information in the archives. The BPN office will also provide further details on the piece of registered land in question, including the boundaries, whether there are any encumbrances on the land, and the measurements of the area.

**Relinquishment of title**

If it becomes apparent through title investigation that the proposed piece of land is subject to a right which foreign companies are not eligible to own, such as Hak Milik, the land is passed indirectly to the proposed buyer through relinquishment of the title. The owner releases his title over the land in return for a settled price. Then an application is made to have a new, appropriate title issued over the land in favour of the buyer.

**Compulsory relinquishment of title for public infrastructure**

Under Law No.2 of 2012, land right holders may be required to relinquish their land rights in exchange for compensation, based on a court order for the development of public infrastructure. The law provides a procedure by which a government instrumentality can acquire land for an infrastructure project, beginning with the preparation of a land acquisition planning document, followed by submission of such document to the relevant provincial governor for evaluation and consideration of any objections from impacted parties. The system in place prior to the introduction of the new land legislation only permitted involuntary relinquishment if the proposed project could not be relocated and the power to revoke such land title lay only with the president.

**Title evaluation for unregistered land**

In order to evaluate the title of any unregistered land there must be a physical inspection of the land as
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well as meetings with the head of the village, district, regent and mayor in order to discern the unregistered land rights applicable to the piece of land in question. Typically, this involves review of any documentary evidence of land rights such as evidence of payment of land tax (girik) and village records. Villages may be subject to collective rights over the land (known as Tanah Bengkok or Tanah Wakaf).

**Conservation areas and other restrictions on land use**

Indonesian law also protects certain forest areas, fisheries and cultural sites. Land covered by such laws may be subject to restrictions as to what uses are authorised and/or certain permits may be required. Consequently, in addition to title evaluation, a company wishing to acquire land should contact the relevant government agencies and work with environmental consultants to ascertain whether the land is protected by any such laws and whether there are any political or cultural sensitivities associated with the land which may not be reflected in Indonesian laws or regulations.

**Spatial zoning**

Spatial zoning (tata ruang wilayah) of the land in question should also be considered in connection with proposed land acquisition and development. The spatial zoning evaluation is undertaken by a review of the relevant zoning maps (national, provincial, municipal, and regency), and, if necessary, consultation with the Coordination Board of National Zoning (Badan Koordinasi Penataan Ruang Nasional) and the relevant provincial, regency, and municipal authorities.

**Forestry areas**

Indonesia has abundant forest areas and related timber resources. Over the years, however, the level of deforestation (both for plantations and other activities) has raised concerns regarding the government’s handling of this critical resource, including standards for issuing permits for the use of forest areas for business activities. Among other conservation initiatives, the Indonesian government has instituted a forest concession moratorium, pursuant to a letter of intent signed in May 2010 with Norway, in furtherance of the global Reducing Emissions from Deforestation and Forest Degradation (REDD+) platform. However, the implementation of the moratorium has come under criticism from environmental groups.

For areas that are eligible for business activities, permits are typically granted in the form of a ‘borrow/lend use’ permit (izin pinjam pakai), after an in-principle permit for the area has been granted (generally for a two-year period) and certain conditions have been fulfilled. The ‘borrow/lend use’ permit may be issued for a 20-year period and may be further extended by the Ministry of Forestry (in some cases, particularly for infrastructure service, a permit can be granted for the life of such use). At the conclusion of the permit’s term, the permit holder may be required to restore the area (such as in connection with mine reclamation activities). Only production forest areas and protected forest areas have been eligible for a ‘borrow/lend use’ permit.

Essentially, the ‘borrow/lend use’ permit authorises the holder to carry out certain activities in the applicable forest area. The permit does not grant the permit holder any ownership rights in relation to the land itself. Examples of things that may be authorised in forest areas pursuant to a ‘borrow/lend use’ permit include:

- mining and related activities;
- power generation, transmission and distribution;
- telecommunication infrastructure;
- roads and railway infrastructure; and
- water supply infrastructure.

Additionally, specific regulations govern certain uses of forest area such as peat land conversion for agriculture purposes or underground mining in protected forest areas.

**Environmental law**

Indonesia’s environmental law requires business activities with an environmental impact to complete an environmental impact assessment, known as an AMDAL (Analisa Mengenai Dampak Lingkungan). An AMDAL is composed of an Environmental Impact Statement (Analisis Dampak Lingkungan or ANDAL), an Environmental Management Plan, and an Environmental Monitoring Plan (Rencana Pengelolaan Lingkungan Hidup dan Rencana Pemantauan Lingkungan Hidup or RKL/RPL). An AMDAL may be in the following forms:

- **Singular AMDAL** (AMDAL tunggal): for a business activity under the jurisdiction of one regulator (e.g. a business activity that is in one sector).
- **Integrated AMDAL** (AMDAL terpadu): for a business activity that is under the jurisdiction of multiple regulators.
- **Regional AMDAL** (AMDAL kawasan): relates to a specific geographic area (such as an industrial estate).
The AMDAL must be approved by the appropriate governmental authority. The appropriate authority is determined with reference to the location, type, and characteristics of the proposed business activities. The following types of business activities are deemed to be strategic in nature and, for that reason, the AMDAL requires the approval of the State Minister for Environmental Affairs (rather than a regional governmental body):

- nuclear power plants, hydropower plants and geothermal power plants;
- oil and gas exploitation, oil refineries, petrochemical industry activities;
- uranium mining;
- aircraft industry, ship industry, arms industry, explosives industry, steel industry, heavy equipment industry, telecommunications industry; and
dams, airports and ports.

A business may be exempt from the requirement of preparing an AMDAL in certain cases, such as where:

- the business is located within an area that already has a Regional AMDAL; or
- the business will provide an emergency response to a natural disaster.

The State Minister of Environmental Affairs has established categories of business activities that require an AMDAL. Business activities that do not require an AMDAL may require either documentation of Environmental Management Efforts and Environmental Monitoring Efforts, known as UKL/UPL, or delivery of a Letter of Undertaking of Environmental Management and Monitoring, known as SPPL.

The 2009 Environmental Law provides that as a prerequisite for the issuance of a business and/or activity permit, the applicant must complete an AMDAL or UKL/UPL, as applicable, and obtain all related environmental licenses required and identified under the respective AMDAL or UKL/UPL. Such other environmental licenses may include separate permits for the handling, storage and/or transportation of hazardous waste (if necessary). These licenses are collectively to be integrated into an environmental permit (Izin Lingkungan). (Businesses that are not required to prepare an AMDAL or an UKL/UPL are not required to obtain an environmental permit.)

Additionally, a business may be required to obtain a “nuisance permit” (referred to as Hinder Ordonnantie or Izin Gangguan), under which periodic retribution to the regional government must be paid.
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Infrastructure

Indonesia has tremendous infrastructure needs and has instituted large-scale legal and institutional reforms (including unbundling and liberalisation) to encourage private investment and increase transparency in its procurement process. Among the various initiatives, the government has established a public private partnership (PPP) programme, with numerous projects in various stages of development.

By law, infrastructure is generally categorised and regulated by sector or type (for example, roads, railways, electricity, telecommunications, water supply, sanitation and solid waste, etc.), with a specific ministry or regulatory body assigned to regulate a particular sector or sectors. State-owned enterprises also play a critical role in these sectors (although in most cases the legal monopolies and quasi-regulatory powers these enterprises previously enjoyed have been eliminated and the private sector can participate in infrastructure development in the country without being obliged to enter into joint ventures with the state-owned enterprises).

Procurement regulations

Indonesia’s public procurement rules have been the subject of extensive reforms, both in terms of improving procurement procedures and accommodating the enhanced fiscal authority of the regional governments under principles of regional autonomy.

The rules extend to the procurement of goods and services by the national and regional governments, state-owned legal entities (such as public universities) and state-owned enterprises or region-owned enterprises which are financed, either wholly or partially, from state or regional budgets. As such, because of this scope of applicability, it is possible for the public procurement regulations to apply even where the procuring body is not directly a governmental institution. In the field of infrastructure, the general procurement regulations are especially relevant in traditional state-financed modes of infrastructure delivery, as well as in cases where the project structure may not be deemed to fall within the PPP programme and has an impact on the state budget.

Generally, competitive public tender is mandatory, except for limited cases. While the public procurement regulations prescribe general requirements, specific areas or sectors may have particular regulatory requirements and may be subject to specific government procurement guidelines.

Public private partnerships – regulatory framework

In recent years, the Indonesian government has recognised the need for using the PPP scheme to fill the infrastructure financing gap in the country. More specifically, in 2010, the government had estimated that the country’s four-year infrastructure financing requirement would approximately be USD 150 billion, of which USD 94 billion was targeted by the government to be financed by the private sector through the PPP scheme. To this end, significant development has been made to the legal and institutional framework for PPP projects in Indonesia, with the government expressing its policy commitment to improve risk allocation for infrastructure projects and encourage competitive bidding amongst the private sector. For example, projects procured under the PPP regulations may be developed on a solicited or unsolicited basis but in all instances, the selection of winning bidder would be undertaken through an open tender process and such projects are structured to allocate risk to the party best able to manage the risk. This is a departure from the various Build-Own-Transfer, Build-Own-Operate and other privatisation schemes conducted by Indonesia in the 1980s and 1990s, where many projects were initiated through direct negotiation with the government.

In this regard, Presidential Regulation No. 67 of 2005 dated November 9, 2005 regarding cooperation between the government and legal entities in the provision of infrastructure, was enacted in 2005 and was later amended by the Presidential Regulation No. 13 of 2010 and the Presidential Regulation No. 56 of 2011 as the basis for PPP implementation in Indonesia (PPP Regulations). Under the PPP Regulations, the types of infrastructure which are eligible for implementation as a PPP include:

- transportation infrastructure (airport services, seaport provision and/or services, and railway infrastructure);
- waste water infrastructure and solid waste handling facilities;
- road infrastructure (toll roads and toll road bridges);
- irrigation infrastructure;
- drinking water infrastructure;
- telecommunication and informatics infrastructure;
- electricity infrastructure (power generation, transmission and distribution); and
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- oil and gas transmission and/or distribution facilities.

Over the last decade, the Indonesian Parliament also passed new laws for specific infrastructure sectors aimed at streamlining and providing clarity on the procurement and private sector development process for projects in these sectors, including:

- Law No. 7 of 2004 regarding Water Resources;
- Law No. 38 of 2004 regarding Roads;
- Law No. 23 of 2007 regarding Railways;
- Law No. 17 of 2008 regarding Maritime Transportation;
- Law No. 18 of 2008 regarding Waste Management;
- Law No. 1 of 2009 regarding Aviation; and
- Law No. 30 of 2009 regarding Electricity.

Subject to the relevant sectoral laws, projects may be procured by ministries and agencies of the national government or a regional government. A PPP project may also be procured by a state-owned enterprise or region-owned enterprise where such an entity has been appointed to provide a public infrastructure service. Examples include Indonesia’s state-owned electricity company, PT PLN (Persero), and the region-owned water supply companies, Perusahaan Daerah Air Minum or PDAMs. The procuring party is generally referred to as the government contracting agency.

Based on the tender results, the winning bidder (or a new company established by the winning bidder) and the government contracting agency will enter into a Cooperation Agreement (Perjanjian Kerjasama) to govern the implementation of the project. The term “Cooperation Agreement” is a generic term used to apply to the main project agreement between the public and the private sector. Depending on the project type, it could constitute a power purchase agreement, water purchase agreement, concession agreement or some other type of agreement.

The Cooperation Agreement must include terms regarding, among other things, the scope and duration of the project, provision of a performance bond, an initial tariff and adjustment mechanism, service performance standards, sanctions if a party does not comply with the provisions of the agreement, dispute resolution mechanisms, force majeure conditions and the terms of redelivery of the project assets back to the government contracting agency at the end of the project term. Additionally, the governing law must be Indonesian law. The Cooperation Agreement may be executed in more than one language and, in case of an inconsistency between the two languages, the prevailing language may be English. The terms of the Cooperation Agreement may also be subject to additional sector specific requirements.

Institutional framework to support PPPs

To promote and support PPP transactions in the country, the Indonesian government provides supporting facilities to the private sector through the use of various funds and financing facilities.

For example, to address difficulties arising from land acquisition for projects by the private sector, the government has sought to provide financial support for such private land acquisition as well as clarify laws and regulations on both public and private land acquisition – including the passing of the Law No. 2 of 2012 on Procurement of Land for the Public Interest, which is set to reduce uncertainty in acquisition of land for infrastructure development.

In December 2009, the Ministry of Finance established the PT Penjaminan Infrastruktur Indonesia (Persero) or PII also known as the Indonesia Infrastructure Guarantee Fund (IIGF) pursuant to the PPP Regulations and Government Regulation No. 35 of 2009 on State Participation for Establishment of a Limited Liability Company for Infrastructure Guarantees. Officially, the IIGF has been mandated by the Ministry of Finance to provide a “single window” for providing government guarantees for PPP projects in order to mitigate any project risks of the private sector, thus improving the creditworthiness, bankability and quality of infrastructure projects in the country (for example, in respect of the financial obligations of government contracting agencies under the applicable Cooperation Agreement). The IIGF has been established with support from the World Bank to provide such guarantees.

The IIGF guarantee is entered into between the IIGF, as guarantor, and the private company appointed to carry out the project (the project company), as beneficiary. Under the terms of the guarantee, the project company is permitted to assign the benefit of

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4 For example, pursuant to some of the laws listed below, the monopolies previously enjoyed by the various state-owned enterprises (such as, the Pelindo (PT Pelabuhan Indonesia (Persero)) (I) to (IV)) (the state-owned seaport operators), PT Angkasa Pura I (Persero) and PT Angkasa Pura II (Persero) (the state-owned airport operators) and PT Jasa Marga (Persero) Tbk. (the state-owned toll road company) have been eliminated to allow for private sector participation in these business sectors.
the guarantee to its lenders, and IIGF will enter into a form of direct agreement (a consent letter) with the project company and its lenders to enable this. If the guarantee is called, IIGF will become entitled to compensation for the amount disbursed under the terms of a recourse agreement entered into between the government contracting agreement and IIGF. The recourse agreement is intended, among other things, to encourage thorough evaluation by the government contracting agency of the risk allocation under the Cooperation Agreement and the government contracting agency’s performance of the terms of the Cooperation Agreement after it is signed.

In October 2011, the IIGF signed its first guarantee: a IDR 300 billion (USD 33.9 million) guarantee in connection with the construction of a USD 3.2 billion coal power plant in Batang, Central Java. As presented at public investor forums, the guarantee covered political risks (referred to as political force majeure events), force majeure events affecting PLN (the state-owned electricity company), as the offtaker, and defaults of PLN under the long-term power purchase agreement.

To further bolster the institutional framework for PPPs, the Indonesian government established the state-owned enterprise, PT Sarana Multi Infrastruktur (Persero) (PT SMI), which is a non-banking financial institution that focuses on infrastructure financing in the country. Both IIGF and PT SMI have provided input to potential government contracting agencies in connection with project preparation and structuring, for example, in providing project implementation advice to the relevant government contracting agency, preparation of pre-feasibility studies, conducting of market sounding exercises and supporting the government contracting agency in the tender process for its PPP project. For example, PT SMI has been appointed by the Ministry of Finance to spearhead the progress of some of the current noteworthy PPP projects in Indonesia – namely, the Umbulan Water Supply PPP Project and the Soekarno-Hatta International Airport Railway PPP Project.

PT Indonesia Infrastructure Finance (IIF) was also established (with start-up capital from the national government (through PT SMI), the International Finance Corporation, the Asian Development Bank, and DEG Deutsche Investitions und Entwicklungsgesellschaft mbH) to provide alternative financial assistance, including direct equity participation or long-term Rupiah debt, to finance PPP projects. Since its establishment, IIF has also received a significant equity investment from Sumitomo Mitsui Banking Corporation.

The synergy of the current institutional support framework is exemplified in the following diagram:
Recently, the national government (through the Ministry of Finance) has just issued a ministerial regulation establishing the mechanism to apply viability group funding for PPP projects as part of government support in the form of cash grants to finance part of the private sector’s PPP project construction costs. A Project Development Facility (PDF) was also developed to provide funds to a procuring entity to examine the viability of any project prior to it being brought to tender – it is hoped that such schemes will ensure proper project preparation will further enhance the bankability and attractiveness of projects coming to the market in Indonesia.

Whilst the government has made significant headway in establishing and implementing the various forms of government support and guarantees for PPP projects, the country still lacks a lead PPP agency to drive its PPP programme. At present, there are various governmental institutions focused on PPP policy development, including the Public Private Partnership Central Unit (P3CU) of BAPPENAS, the Policy Committee for Accelerating the Provision of Infrastructure (KKPPI) and the Ministry of Finance’s Risk Management Unit (RMU) and relationship between the various governmental units are described in the following diagram:

Diagram 8:PPP Project Development Units

Source: BKPM Presentation (May 2011)
Electricity generation and independent power producers

PLN, the state-owned electricity company, holds a de facto monopoly on supplying electricity to consumers connected to the national grid. To promote affordability of electricity to consumers, PLN receives funding from the state budget, referred to as a “public service obligation” (PSO) subsidy. PLN’s legal monopoly has been removed by the 2009 Electricity Law, which contemplates that region-owned enterprises and private companies will also be eligible to become licensed electricity providers. Indonesia’s established independent power producer (IPP) project structure features PLN as the sole off-taker under a Power Purchase Agreement (PPA), possibly backed up by some form of national government support (through the Ministry of Finance and/or IIGF). Types of government support have included a guarantee from the IIGF (which may have the national government as co-guarantor), a business feasibility guarantee letter (surat jaminan kelayakan usaha or SJKU) and, for older projects, a government support letter. PLN has also tendered projects without government support.

Like PPPs, IPPs require competitive tender except under limited circumstances. Competitive tender is not required for:

- purchases of electricity from power plants that use renewable energy, marginal gas, coal mine mouth, or other local energy sources;
- purchases of excess electricity from existing facilities; and
- purchases during an electricity supply crisis.

Nevertheless, projects intended to benefit from the government’s PPP programme incentives (such as IIGF guarantees) are to be procured through competitive tender.

The government has also established a regulatory framework to promote renewable energy projects, including privately-owned small-scale hydropower projects (i.e. those under 10MW).

For geothermal projects, geothermal working areas are to be tendered by the regional government in which the area is located and PLN will act as off-taker based on a tariff determined in connection with the working area tender. Geothermal projects pre-dating the 2003 Geothermal Law were established under joint operation contracts entered into with the state-owned oil and gas company, PT Pertamina (Persero). These contracts are to remain valid until their expiry. Pertamina (now through its subsidiary, PT Pertamina Geothermal Energy) continues its participation in these joint operation projects and has developed its own geothermal projects as well.
Case Study:  
**Central Java 2X1000MW Independent Power Producer (IPP) Project**  

In October 2011, PT PLN (Persero) (PLN), Indonesia’s state-owned electricity company, signed a power purchase agreement (PPA) with PT Bhimasena Power Indonesia (BPI), a company established by J-Power, Itochu Corporation and PT Adaro Energy Tbk., relating to a 2x1000MW ultra-super critical coal-fired power plant to be constructed in Batang, Central Java, Indonesia. This 25-year contract, under which BPI will build, own, operate and transfer a new facility requiring in excess of USD3 billion in investment, represents the first “cooperation agreement” signed under the Government of Indonesia’s public private partnership (PPP) program. The project also represents the first time an infrastructure project was procured under the then prevailing PPP procurement regulations (Presidential Regulation No. 67 of 2005, as amended by Presidential Regulation No. 13 of 2010) and the first recipient of a guarantee from the Indonesia Infrastructure Guarantee Fund (IIGF). The Guarantee Agreement, which included a guarantee from the IIGF with a co-guarantee from the Minister of Finance on behalf of the national government, was signed simultaneously with the PPA.

International Finance Corporation (IFC) provided technical advisory services to PLN in connection with the tender. Reportedly, 30 firms provided expressions of interest, 15 firms requested pre-qualification documents and seven firms were pre-qualified to bid. Ultimately, four consortia submitted bids in April 2011: the J-Power-Itochu-Adaro consortium, Marubeni Corporation, China Shenhua Energy Company Ltd., and CNTIC - Guangdong Yudean Consortium. The J-Power-Itochu-Adaro consortium was announced as the winner in June 2011 and established BPI in preparation for signing the PPA and Guarantee Agreement.

Reportedly, financing for this project will be provided by JBIC and commercial banks (including Sumitomo Mitsui Banking Corporation) and the project will utilise Japanese technology. Financial close was originally scheduled for October 2012 (one year after the PPA signing). However, financial close has been reportedly delayed due to issues relating to land acquisition and the need for additional time to complete the environmental study for the project. (The project terms, which reportedly require that BPI procure the project site itself, were finalised before the promulgation of Law No. 2 of 2012 regarding Land Procurement in the Public Interest.)

Meanwhile, in October 2012, PLN and IIGF announced the intention to use the Central Java IPP project as a model for the upcoming Sumsel 9 and 10 mine-mouth IPP projects, which are also intended to be implemented as PPPs. PLN has also continued to tender projects under Indonesia’s conventional (non-PPP) IPP program, some of which are eligible for government support in the form of a business feasibility guarantee letter (surat jaminan kelayakan usaha or SJKU).

**Drinking water and bulk water supply infrastructure**

Existing drinking water and bulk water supply infrastructure in Indonesia is predominantly provided by region-owned water companies, known as PDAM. Generally, a PDAM is established by a region to provide drinking water infrastructure and services to residents and commercial consumers within the applicable region. As a result, the applicable regional government effectively controls the PDAM, although the PDAM has independent management, employees and budget.

In 2005, the Supporting Body for the Development of Drinking Water Supply System (Badan Pendukung Pengembangan Sistem Penyediaan Air Minum or BPPSPAM), a sub-division of the Ministry of Public Works, was established with the primary objective of advising and assisting the regional governments and PDAMs in developing water supply services. In regions where private investment in water supply infrastructure exists, the regional government may also establish an independent regulatory body to act as a local regulator.

Water PPP projects in Indonesia may be implemented as a bulk water supply service where PDAM acts as the water purchaser and distributes the supplied water to consumers, or on a full concession basis, where the private sector provides water supply services to consumers directly. The former option, or some other project structure involving the applicable PDAM, is required if the project’s service area is within the region of an existing PDAM. However, for ‘greenfield’ projects the regional government may grant a concession directly to the private investor.
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Railways
PT Kereta Api Indonesia (Persero), the state-owned railway company, and its subsidiaries, operate the existing public railway infrastructure in Indonesia. Several companies have also been established to implement urban rail projects that are currently in development. These include PT Mass Rapid Transit Jakarta, established by DKI Jakarta to implement the Jakarta MRT system, and PT Railink, established by PT Kereta Api Indonesia (Persero) and PT Angkasa Pura II (Persero) to implement proposed airport rail link systems.

Under the 2007 Railway Law, regulatory authority is shared between the national, provincial and municipal governments, depending on the alignment and service area of the railway. If the rail service crosses more than one municipality or regency, but remains within one province, then the provincial government is the primary regulatory authority. However, where the rail service crosses more than one province, the national government (through the Minister of Transportation) is the primary regulatory authority. The 2007 Railway Law promotes an unbundled (vertically separated) system, in which the infrastructure manager and the rolling stock operators may be different, but the law does not prohibit an integrated operation.

Railway infrastructure may also be developed as infrastructure related to another business operation in the form of a ‘special railway’. Mining, plantation and agricultural operations, as well as tourism companies, may be authorised to establish a ‘special railway’, so as long as:

- the facilities do not serve the public (unless pursuant to government approval), and
- the facilities are primarily located within the areas owned by the relevant business operator.

Urban transport systems
The national government and the regional governments of major urban areas have been developing plans for advanced multi-mode urban transport systems, which would include rail systems, bus systems, and integrated ticketing systems. DKI Jakarta, for example, has been investing in its bus rapid transit (BRT) system and has established PT Mass Rapid Transit Jakarta to implement the proposed Jakarta MRT.

Other projects which have been considered by DKI Jakarta include the Soekarno-Hatta International Airport Railway PPP Project and the Jakarta monorail. Other cities, such as Jogjakarta, Bandung and Surakarta, have also considered proposed development of urban transport systems.

Role of domestic banks
The involvement of domestic banks in Indonesia in providing loans for project finance has significantly increased in the recent years with Bank Mandiri, Bank Negara Indonesia, Bank Rakyat Indonesia, and Bank Central Asia leading in terms of their participation in high profile project finance / infrastructure transactions in the country. For example, these four leading banks were all involved in the recent syndicated financing for the Jasa Marga’s Nusa Dua-Benoa toll road project in Bali.

Most domestic banks tend to favour projects in the toll road, ports, rail and power plant sectors. In this regard, for example, reportedly Bank Mandiri is looking forward to invest in several railway projects such as the construction of railroads to Soekarno-Hatta Airport, Greater Jakarta electric train development, as well as the construction of railways in Sumatera (from Tanjung Enim to Lampung).

Conclusion
With Indonesia amending much of its infrastructure legal framework, dissolving public monopolies previously enjoyed by state-owned enterprises and opening the infrastructure market to private sector investors, the Indonesian government can surely be said to have taken and are taking the right steps to encourage private sector investment in the infrastructure sector in the country. Furthermore, as part of the government’s Master Plan for Acceleration and Expansion of Indonesian Economic Development 2011 to 2025 (MP3EI), the government has identified a list of projects to be implemented over the following years to enable the country achieve its objective of being one of the world’s developed countries – in this regard, consistent with the needs of the country, the government expects that 50% of the projected infrastructure investment will be channelled to the power / energy and toll roads / roads sectors. Even though the success of the MP3EI remains to be seen, it is undeniable there will be list of notable infrastructure deals and projects coming to the market in Indonesia in the next few years and which may result in Indonesia being a keen contender to be the infrastructure development hub in South East Asia.
Competitive tender is required in the water supply sector in most cases, although a PDAM may be permitted to enter into direct negotiation (so-called ‘business to business’ arrangement) with a private investor for bulk water supply services. However, only PPP contracts procured through competitive tender are eligible to receive a guarantee from IIGF or other types of government support.

The purchase price for bulk water supply to PDAM may be subject to negotiation (in the case of a ‘business to business’ arrangement) or may be the subject of the competitive tender. However, the water supply tariff for consumers is subject to approval from the applicable regional government.

At the time of writing, the Indonesian government has launched two significant water PPP projects, being the Umbulan Water Supply PPP Project and Bandar Lampung Water Treatment and Supply Project – a strong indication of the government’s commitment to promote the private sector involvement in infrastructure development in the water sector in the country.

**Toll roads**

Since 2004, the provision of toll roads has been procured through a PPP scheme and PT Jasa Marga (Persero) Tbk. has lost the legal monopoly which it previously enjoyed (though it remains Indonesia’s largest toll road operator). In 2005, the Toll Road Administration Agency (Badan Pengatur Jalan Tol or BPJT), under the Ministry of Public Works, was established to act as regulator of toll road development and as the procuring body for new toll road projects. Like other infrastructure sectors, toll road projects must be procured through competitive tender, although direct negotiation is permitted if there is only one bidder.

A significant challenge to toll road development is the availability of land and the risks associated with the costs of procuring it. Consequently, the government has established a support programme specific to the toll road sector, whereby the investor may only be obliged to cover a maximum of 110% of the initial estimated cost of land procurement. However, based on more recent laws and regulations, the approach to government support for land procurement may shift towards the public sector procuring the land directly.

Toll tariffs are set based on a decree by the Minister of Public Works with government regulations requiring regular tariff adjustments every two years.

A noteworthy milestone was achieved in the toll road sector in mid-2012 with the closure of the syndication of debt for Jasa Marga’s Nusa Dua-Benoa 45-year toll road concession in Bali. The deal was signed with a full list of lenders comprising of mainly domestic (Indonesian) banks.

**Seaports**

The 2008 Shipping Law established a new legal and institutional framework for the development and operation of seaports in Indonesia. Previously, both the regulation and operation of seaports were undertaken by certain state-owned enterprises, the Pelindos (PT Pelabuhan Indonesia (Persero) (I) to (IV)). Under the new framework the Pelindos remain port operators and the Ministry of Transportation and port authorities will act as regulators.

At least four newly established port authorities have been mandated to carry out regulatory functions for particular ports, including becoming contracting agencies for new port service investments. The Pelindos, however, may still hold the right to operate existing port infrastructure, including any expansion in these existing ports. General policy authority in respect of seaports is retained by the Minister of Transportation.

There is a separate regulatory framework for the development of privately owned terminals (which may be required in connection with, among other activities, mining operations and coal-fired power plants).

**Airports**

The 2009 Aviation Law provides that private parties are eligible to provide airport infrastructure and services and supporting infrastructure. However, foreign ownership of companies involved in this sector cannot exceed 49%. The 2009 Aviation Law also introduces changes to the regulatory and institutional framework with respect to the provision of airport services, under which the monopoly of the state-owned airport operators, PT Angkasa Pura I (Persero) and PT Angkasa Pura II (Persero), has been eliminated.

The regulation of airport services is to be carried out by the airport authorities. Various new airport projects have been proposed by the Ministry of Transportation and the applicable regional governments. Existing airport infrastructure is operated by the two state-owned airport operators, which may in turn procure goods and services from private parties. There is also a separate licensing regime for the establishment of private airports and helipads.
Oil and gas

Indonesia has experienced decreasing oil production since the 1990s and this decrease, coupled with an increase in domestic consumption, led to Indonesia becoming a net importer of oil in late 2004 and voluntarily suspending its OPEC membership in 2008. Despite this, many international players continue to participate in the Indonesian oil sector. For example, US-based oil and gas company Hess Corporation will reportedly invest US$200 million per year in Indonesia in the next six to 10 years until 2018, and that between July and December this year, PT Chevron Pacific Indonesia will commence drilling in 250 to 350 locations to boost oil output in the firm’s oil concession areas in Riau province.

In contrast to oil, Indonesia’s gas production has gradually increased in recent years, and the country has significant reserves left to develop. In particular, Indonesia is a major exporter of liquefied natural gas (LNG). In recent years, the Indonesian government has attempted to encourage further investment in the oil and gas sector, including for development of deep water and non-conventional oil and gas resources, as well as downstream infrastructure (refineries, petrochemical plants and pipelines), through various incentives. Oil and gas revenues contributed to over 20% of the nation’s revenue in 2011, based on statistics published by the Ministry of Finance.

Under Indonesian law, oil and gas activities are separated into downstream and upstream sectors. The law defines upstream activities as exploration and exploitation and downstream activities as processing, transporting, storing and trading. The Minister of Energy and Mineral Resources has general authority over Indonesia’s energy sector. BPMIGAS was the regulatory body overseeing upstream activities and was the executor, on behalf of the Indonesian government, of Production Sharing Contracts (PSCs) and other types of Cooperation Contracts. In November 2012, a Constitutional Court decision invalidated aspects of the 2001 Oil and Gas Law relating to establishment and authority of BPMIGAS and required BPMIGAS’s dissolution. Authority formerly held by BPMIGAS has been transferred to the Ministry of Energy and Mineral Resources by Presidential Regulation No. 95/2012. The government also announced the transfer of BPMIGAS’s operations and staff into the Special Task Force for Upstream Oil and Gas Activities (Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi or SKK Migas), under the supervision of the Minister of Energy and Mineral Resources. All the employees of BPMIGAS have been assigned to SKK Migas, to ensure continuity in oil and gas operations. BPMIGAS is the regulatory body overseeing downstream activities.

Based on the framework established by the 2001 Oil and Gas Law, PT Pertamina (Persero) (Pertamina), the state-owned oil and gas company, lost both its quasi-regulatory function (as the predecessor of BPMIGAS as government representative under PSCs) and its legal monopoly in the downstream sector and became a profit-oriented entity. The gas distribution and pipeline sectors have been liberalised as well, and PT Perusahaan Gas Negara (Persero) Tbk. (PGN) listed on the IDX in 2003.

Upstream sector

Upstream activities are carried out by a contractor for designated working areas, which are identified in a Cooperation Contract between the contractor and the Indonesian government. These working areas are assigned to contractors through either a competitive tender or a “direct offer.” Under a direct offer, a company that performed a technical assessment through a joint study with the Directorate General of Oil and Gas (a sub-division of the Ministry of Energy and Mineral Resources) has a right to match the highest bidder in the tender for the working area. Indonesia has also established a tender procedure specific to coal bed methane (CBM) and other non-conventional oil and gas resources (shale oil, shale gas, tight gas and methane hydrate).

The contractor under a Cooperation Contract may be a foreign entity with a permanent establishment in Indonesia or an Indonesian entity. Under the “ring fencing” principle, an entity is permitted to hold an interest in only one contract.

Major players in Indonesia’s upstream sector include Chevron, ConocoPhillips, BP and ExxonMobil. Chevron operates Indonesia’s two largest fields, Minas and Duri, located off the eastern coast of Sumatera. Indonesia’s largest new development is the Cepu block operated by ExxonMobil (45% stake), with Pertamina (45% stake) and four local governments in Central and East Java (collectively a 10% stake). Cepu consists of four fields (Banyu Urip, Jambaran, Alas Tua and Kedung Keris); Banyu Urip initially started production in December 2008. Infrastructure being procured for the Cepu project include an offshore pipeline, being provided by PT Rekayasa Industri and LIKPIN LLC, and a floating
storage and offloading (FSO) facility, being provided by Sembawang Shipyard and PT Scorpa Pranedya.

Cooperation Contracts usually are in the form of a PSC but can also take other forms, including Service Contracts, Technical Assistance Contracts or Enhanced Oil Recovery Contracts. (In contrast with other types of Cooperation Contracts, Technical Assistance Contracts and Enhanced Oil Recovery Contracts – which relate to enhancing production at an existing field – entered into with Pertamina prior to the 2001 Oil and Gas Law were not transferred to BPMIGAS in connection with the industry liberalisation.)

The PSC was an Indonesian innovation, introduced in the mid-1960's as a contractual method intended to redress the balance between a host country and an international company wishing to exploit its resources. Conceptually, under a PSC, the contractor is appointed to act for the government in connection with the exploration and production of oil and gas resources.

Under an Indonesian PSC:

- ownership of the oil and gas remains with the government until the selling point of the product (unlike a concession system, where title transfer typically occurs “at the wellhead”);
- ultimate management control is retained by the government and risk and capital investment are primarily borne by the contractor;
- there is a 30-year term, subject to a possible 20-year extension; the term includes a six-year exploration period with an optional four-year extension;
- activities under a PSC must start within six months of signing, a development plan must be submitted by a defined time and production must commence within a defined time after conclusion of the exploration period;
- the contractor will be required to offer a 10% undivided participation interest in the area to an Indonesian investor (under more recent PSCs, after the first development plan is approved, the participation interest must be offered first to a region-owned enterprise in exchange for 10% of operating costs and if a region-owned enterprise does not accept the offer, the participation interest must be offered to a state-owned enterprise or a wholly Indonesian owned private company);
- portions of the working area have to be relinquished in accordance with the exploration and development program; complete relinquishment may be required in cases where the PSC is breached or in certain other cases;
- the contractor may be required to provide a performance bond (under more recent PSCs, this has been in an amount equal to planned expenditures for the first three years);
- property, plant and equipment in the name of the contractor become the property of the government (items under lease may be re-exported, however);
- there is a domestic market obligation (DMO) for oil and recent gas PSCs, whereby the contractor is required to sell a percentage of its equity share of production to the domestic market at a determined price; and
- the contractor can transfer its interest under a PSC with consent from the government; transfers to non-affiliates can only occur after three years.

The government may issue an investment credit in order to compensate companies for the delay in income generation while the exploration process is undertaken. An investment credit is negotiated between the contractor and the government on a project-specific basis.

After tax, cost recovery and any investment credits, any remaining production revenue is split between the contractor and the government. This split may vary but in the past has generally been a 85/15 percentage split under an oil PSC and 70/30 percentage split under a gas PSC (for the government and the contractor, respectively). More attractive splits have been provided for deep water and frontier blocks. PSCs since 1988 provide for “First Tranche Petroleum” (FTP) (which may be split between the government and the contractor or, for more recent PSCs, credited entirely to the government) before any cost recovery. Additionally, in order to develop investment in CBM, in 2010 the government announced a Gross Production Sharing Contract for CBM projects, under which all production would be divided between the contractor and the government.

Cost recovery provides a basis for the contractor to recover certain costs associated with its activities from the proceeds of production (“cost oil”) prior to the split with the government (“equity oil”). If production does
not go ahead then the contractor will not recover any costs incurred from exploration. Although PSCs since the late 1970s have omitted a cost recovery cap, FTP effectively creates a cost recovery cap equal to the remaining percentage (e.g., if FTP is equal to 20%, cost recovery is effectively capped at 80%). In 2009 and 2010, aggregate cost recovery was capped in Indonesia’s state budget at US$11.05 billion and US$12 billion, respectively. After much criticism, this practice was reportedly abandoned in 2010.

Government Regulation No. 79 of 2010 (GR 79/2010), which took effect on 20 December 2010, and implementing regulations promulgated in 2011 have made significant changes to Indonesia’s cost recovery regime. In addition to setting out which costs were recoverable, the government identified various ancillary costs that were deemed not to be recoverable, including donated items, sanctions, depreciation of certain goods and equipment, bonuses paid to the government, costs incurred prior to signing, interest recovery incentives and commercial audit costs. Certain matters in existing Cooperation Contracts which are not regulated or expressly regulated under Cooperation Contracts entered into prior to 20 December 2010 must have conformed to the new regulation by 20 March 2011 (being three months after the effective date of GR 79/2010). These matters include the extent of state revenue, requirements for cost recovery, the Contractor’s income tax in the form of production from the Contractor’s share of crude oil and/or natural gas, and income from outside the Cooperation Contract in the form of uplift and/or assignment of a participating interest in the Cooperation Contract. The exact scope of these transitional provisions remains unclear, and there are a number of implementing regulations yet to be issued.

In a welcome development, it has been reported that a ministerial decree will be promulgated allowing funds for certain corporate social responsibility projects to be cost recoverable.

**Downstream sector**

Pertamina remains the main distributor of oil and gas products in Indonesia and owns nearly all of Indonesia’s refineries. (The Tuban aromatics refinery is owned by PT Trans Pacific Petrochemical Indotama, which completed a debt restructuring with Pertamina, BPMIGAS and PT Perusahaan Pengelolaan Aset (Persero), the state-owned asset management company, in December 2011.) Additional refineries planned by Pertamina include expansion of the Balongan refinery in West Java and a new refinery and petrochemical complex in Tuban, East Java. Indonesia imports significant quantities of refined products to meet demand, and BPHIMIGAS has reportedly stated that the country needs at least three additional oil refineries in order to bolster its fuel stockpiles and ease pressure on the national budget.

Consumers in Indonesia enjoy subsidised fuel products through the “public service obligation” (PSO) program, under which the government will reimburse a distributor appointed to sell such products the difference between the subsidised price and a “market” price, based on the Mean of Platts Singapore, plus an agreed amount for transportation and distribution and an agreed margin. Originally, subsidised fuel products were distributed exclusively by Pertamina, but other players now participate in this market in limited geographic areas. Although the fuel subsidy has been identified as a significant burden for the national budget and an impediment to further development of Indonesia’s fuel market, proposed reductions in the subsidy have met political and public opposition. The government also sets household and small-scale consumer prices for natural gas.

Improving Indonesia’s natural gas transportation infrastructure – in the form of regasification terminals or pipelines – is considered critical to enabling PLN to decrease dependence on fuel oil for power generation and increasing natural gas’s role in the country’s energy mix. Wholesale natural gas supply and trading agreements may be concluded by direct negotiation.

Foreign investors wishing to invest in downstream activities in Indonesia must establish an Indonesian incorporated entity (a PMA company) and obtain a particular licence issued by BPHIMIGAS applicable to the relevant downstream activity; a company is permitted to have a number of such licences.

**Liquefied Natural Gas**

Indonesia has three operating LNG liquefaction projects, Bontang (East Kalimantan), Arun (North Sumatera) and Tangguh (West Papua). The Donggi-Senoro project (Central Sulawesi) is being developed by Mitsubishi Corp, Pertamina, PT Medco Energi and Korea Gas Corporation. Donggi-Senoro will be Indonesia’s first LNG project with a downstream model, also known as a non-integrated project, where the investors in gas extraction and LNG production are different. Other planned liquefaction
projects include the Abadi floating LNG project (to be located near West Timor).

Due to increasing domestic demand for natural gas, it has been reported that Pertamina plans to convert the Arun LNG plant into an LNG receiving and regasification terminal, which is expected to supply gas for industries and power plants in Aceh and North Sumatra. A West Java regasification facility is expected to begin operation in 2012, with the Regas Satu Floating Storage and Regasification Unit (FSRU) operated by PT Nusantara Regas, a joint venture of Pertamina (60%) and PGN (40%). Other FSRUs have been planned for Belawan, North Sumatera and Central Java. However, as of April 2012, the Belawan project had been reportedly transferred to Lampung, South Sumatera (the terminal is intended to come into service in mid-2014) and the Central Java project has been suspended due to concerns relating to potential oversupply and coordination with planned pipeline projects. In May 2012, PLN received the first gas delivery from the Regas Satu FSRU.

**Gas Pipelines**

PGN and Pertamina are major players in the pipeline sector. Since market liberalisation, private national firms (such as PT Bakrie & Brothers Tbk. and PT Rekayasa Industri) and foreign firms have entered the sector as well. Minister of Energy and Mineral Resources Decree No. 0225K/11/MEM/2010 on the Master Plan of National Networks of Natural Gas Transmission and Distribution 2010-2025 sets forth the government’s plans for national pipeline projects.

Transporting gas by pipeline requires a special authorisation granted by BPHMIGAS through competitive tender and a transportation business license from the Minister of Energy and Mineral Resources. A company holding a transportation business license is required to provide open access to its pipeline facilities to parties who hold a trading business license. A holder of a transportation business license is not authorised to engage in gas trading through pipelines. However, an affiliated entity may establish a related trading operation, based on a separate trading business license.

Trading of gas through pipelines requires a trading business license issued by the Minister of Energy and Mineral Resources. The company holding the trading business license is required to use existing transmission and/or distribution pipes (based on principles of open access). If no existing pipes are available or the existing pipes cannot be used, the company is allowed to construct its own downstream dedicated pipes, subject to receiving an additional license from the Minister and a special authorisation from BPHMIGAS. The downstream dedicated pipes are not allowed to be used for other companies, except as authorised by the Director General for Oil and Gas, and after procuring a transportation business license from the Minister.

**The cabotage principle**

Indonesia’s 2008 Shipping Law stipulates that the cabotage principle was to be fully implemented in Indonesia by May 2011. The cabotage principle under maritime law stipulates that domestic shipping is the exclusive right of the relevant country and, in essence, allows a coastal nation such as Indonesia to prohibit foreign flagged vessels from operating within its territory.

After much criticism by the oil and gas industry, in 2011, the government stipulated by regulation that foreign ships can perform other activities that do not include passenger transport activities in Indonesian waters, so long as Indonesian flagged vessels are not yet available or not sufficiently available. These other activities include oil and gas surveys, drilling, offshore construction, support for offshore operations, dredging, and salvage and underwater services. Foreign flagged vessels enjoying the exemption require a permit from the Minister of Transportation and are subject to various restrictions and requirements. Based on Minister of Transportation Regulation No. 48 of 2011, the expiry of the exemption from the cabotage principle varies depending on the type of vessel. Unless the exemption periods are further extended, the cabotage principle will be applicable to all vessels involved in the oil and gas industry as of January 2016.
Doing business in Indonesia

Coal and mineral mining

With plentiful coal and mineral reserves, Indonesia has for years experienced the development of large-scale mining projects by companies such as BHP Billiton, Freeport-McMoRan and International Nickel (now Vale), among others. More recently, the field has featured increasingly prominent local players such as Adaro Energy and Bumi Resources, as well as a multitude of small and medium-sized local companies.

There has been a high level of regulatory uncertainty following the promulgation of Law No. 4 of 2009 on Mineral and Coal Mining (the 2009 Mining Law). Nevertheless, in the period immediately after the law’s issuance, the industry had been driven by strong demand for thermal coal for domestic and regional power generation, as well as for coking coal and various other commodities feeding the development of Asia’s industrial capacity and public infrastructure.

In 2012, the situation changed, with overall demand for commodities dampening. Specifically, significantly lower coal prices resulted in many Indonesian miners lowering production targets and focusing on increasing efficiency.

Contracts of work

Prior to 2009 investments were primarily made by international investors through mining agreements entered into with the Indonesian government, known as Contracts of Work (Kontrak Karya) or Coal Contracts of Work (Perjanjian Karya Pengusahaan Pertambangan Batubara). These agreements, based on Indonesia’s then prevailing 1967 Basic Mining Law, were generally intended to provide an overall regulatory framework and fiscal regime for the particular mining activities of the investor. The “Contract of Work” system, which retained some characteristics of traditional mining concession agreements found in other developing countries, is now being phased out. New mining projects are to be carried out under a licensing system, which applies both to mining projects developed by domestic investors and those developed by foreign investors. Prior to 2009, a separate licensing system (the issuance of mining authorisations (kuasa pertambangan or KPI)) was available to domestic mining companies only. KPs were required to be converted to mining business licenses.

The 2009 Mining Law provides that existing “Contracts of Work” are to remain effective until their expiry but their terms (other than those relating to state revenues) must be amended to become consistent with the 2009 Mining Law by January 2010. This deadline has passed without any amendments having been publicly announced, and reportedly negotiations between the relevant mining companies and the government are on-going.

Controversial differences between the terms of “Contracts of Work” and the 2009 Mining Law regime include a significant reduction in the maximum size of the mining area and potentially more stringent share divestment requirements and restrictions on the retention of contractors, among other issues.

Mining business licences

Commercial mining in areas that are not in state reservation areas is authorised by a Mining Business License (Izin Usaha Pertambangan or IUP) while mining in state reservation areas is authorised by a Special Mining Business License (IUP Khusus or IUPK). The issuing authority for an IUP varies depending on the source of the equity capital and the location of the mining area (as detailed in the table below). IUPKs are always issued by the Minister of Energy and Mineral Resources on behalf of the national government.

IUP with respect to non-metal minerals or rock are obtained by means of an application, and IUP with respect to metal minerals or coal are obtained by means of a tender and competitive bidding process. All IUPK licenses issued to private enterprises are also obtained by means of a tender and competitive bidding process. However, state-owned enterprises and region-owned enterprises are given priority for such licenses.

Licenses are issued either for exploration (IUP Eksplorasi) or production (IUP Produksi Operasi). By law, the holder of an exploration license is guaranteed an upgrade to a production license as a continuation of the mining business activity, so long as certain conditions are met.

License holders are required to prioritise the use of domestic manpower, goods and services. There are also specific restrictions on the retention of mining service providers (i.e. contractors). They must also develop a corporate social responsibility programme, including a programme to develop and empower the local community, which is to be established in consultation with the national government, the regional government and the local community.
### Doing business in Indonesia

**Project location/ Source of capital**  | **Licensing authority**  
--- | ---  
Foreign Equity Capital*  | Minister of Energy and Mineral Resources  
State Reservation Area  | Minister of Energy and Mineral Resources  
Multiple Provinces  | Minister of Energy and Mineral Resources, after obtaining recommendations from applicable governors, regents and mayors  
Single Province, Multiple Regencies or Cities/ Domestic Equity Capital  | Applicable governor, after obtaining recommendations from applicable regents and/or mayors  
Single Regency or City/ Domestic Equity Capital  | Applicable regent or mayor  
Offshore Projects greater than 12 Nautical Miles from the Coastline  | Minister of Energy and Mineral Resources  
Offshore Projects in the Sea Territory of Multiple Regencies or Cities/ Domestic Equity Capital  | Applicable governor  
Offshore Projects greater than four but less than 12 Nautical Miles from the Coastline/ Domestic Equity Capital  | Applicable governor  
Offshore Projects less than four Nautical Miles from the Coastline in the Sea territory of Single Regency or City/ Domestic Equity Capital  | Applicable regent or mayor government.  

* Prior to Government Regulation Number 24 of 2012, the applicable regent or governor retained IUP licensing authority in respect of intra-regency or inter-regency/intra-provincial mining areas where the applicant has foreign equity capital.

Holders of an IUP must provide a mine closure guarantee (in accordance with the operational age of the mine) and are obliged to pay annual dead rent and royalties as well as other tax and non-tax state revenue fees. License holders must provide various plans and periodic reports to the applicable regulators, including a plan for investment, a plan for reclamation, a plan for post-mining activities, an annual work plan and budget, and various other periodic reports.

**Long-term off-take agreements**

The 2009 Mining Law has indirectly imposed various limits on the ability of a mining company to enter into a ‘life of mine’ or other long-term off-take agreements.

- Under the standard IUP terms, an IUP holder is required to obtain the approval of the Minister of Energy and Mineral Resources for any sales contract with a term in excess of three years.
- IUP holders are required to comply with the domestic processing obligations imposed in respect of the mineral and/or coal resources that are the objects of the licence. The government has proposed to restrict or prohibit the exportation of low-calorie coal.
- IUP holders are required to prioritise the fulfilment of domestic and regional needs and may be required to sell a portion of their reserves to the domestic market.
- IUP holders are required to complete sales with reference to a benchmark price (the coal reference price or mineral reference price) periodically established by the Ministry of Energy and Mineral Resources.

The foregoing restrictions are particularly relevant to agreements proposed with potential strategic partners or affiliates, off-take agreements proposed to support bank financings and off-take financing structures.

**Domestic processing requirements**

The 2009 Mining Law requires IUP holders to comply with prevailing domestic processing or “added value” (nilai tambah) requirements. In February 2012, Indonesia’s Minister of Energy and Mineral Resources promulgated a regulation implementing this policy with respect to metals (such as bauxite, copper, gold, iron, nickel and tin), non-metal minerals and rocks (but not to coal). This regulation would, as of specified dates, ban ore exports and require refinement or processing of minerals to specified levels prior to export. Due to concerns voiced from both mining companies and trading partners, the implementation of the ban on unprocessed exports has been deferred until 2014, so long as the proposed exporter can fulfil certain conditions set by the Director General of Minerals and Coal and the Minister of Trade and an export duty on specified commodities is paid. In 2012, the Supreme Court also issued an opinion which limits the
Do you have any questions about the content or need any assistance with the document?
Since the late 1980’s Indonesia has undertaken substantial legislative reforms in order to improve the legal framework protecting intellectual property rights. This process of reform accelerated when Indonesia ratified the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs), as part of Law No. 7 of 1994, which established Indonesia’s membership in the World Trade Organisation.

Laws and regulations have been promulgated to implement the various conventions and treaties to which Indonesia is party and to establish international standards of intellectual property protection. However, despite such legislative developments, infringement of intellectual property rights is still common, in particular in terms of piracy and trademark counterfeiting, and Indonesia still remains on the US Trade Representative ‘Watch List’.

**International treaties**
Indonesia has been a party to the Paris Convention for the Protection of Intellectual Property and the Convention establishing the World Intellectual Property Organization since 1979. Since 1997 Indonesia has also been party to the Patent Cooperation Treaty, the Berne Convention for the Protection of Literary and Artistic Works, the Trademark Law Treaty, and the WIPO Copyright Treaty, as well as signing up to the WIPO Performances and Phonograms Treaty in 2005. The Indonesian government has also entered into various bilateral agreements with countries for the protection of copyright.

**Trademarks**
Under the Trademark Law (Law No.15 of 2001) a trademark is a distinguishable sign and is used in the trading of goods and services.

Indonesian trademark applications must be submitted to the Directorate General of Intellectual Property for approval. If the application is approved it is published in the Official Trademarks Report (or a proper substitute). The approved trademark is then valid for ten years and is renewable. Trademarks can also be assigned.

**Copyright**
Under the Copyright Law (Law No. 19 of 2002), to obtain the protection of copyright an author’s work must show originality in the field of science, arts or literature. Once copyright has been obtained the author, copyright holder, or other beneficiaries of a copyright have the exclusive right to publish or reproduce a work or allow a third party to do the same. The Copyright Law also recognises ‘moral rights’ and ‘related rights’. ‘Moral rights’ consist of the exclusive right of the author to make changes or amendments to the work, and to alter the name associated with the work and the titles of the work. ‘Related rights’ are rights associated with a third party to reproduce or broadcast the copyrighted material.

The Ministry of Law and Human Rights oversees the registration of copyright through the General Register of Works and provides for the official announcement of such registrations. Although registration is not required for the creation of copyright, the name that is registered in the General Register of Works and named officially by the Ministry of Law and Human Rights is deemed to be the author of the work.

The length of protection of copyright varies, for:

- **copyright on books and other written works**: the copyright is valid for the lifetime of the author and a period of fifty years after their death.
- **copyright on computer programmes, cinematographic work, photographic works, databases and the related rights of a licensed agent and a sound recording producer**: the copyright is valid for fifty years, the related rights of the broadcasting institution are valid for twenty-five years, and moral rights are protected indefinitely.

**Patents**
Under the Patents Law (Law No. 14 of 2001) a patent must contain an inventive aspect and be capable of industrial application.

Patents can be obtained for equipment or products (including chemical compounds and micro-organisms) and processes (where a product is manufactured, including non-biological and micro-biological processes), and a simple patent can be obtained for certain tangible inventions. Patents cannot be obtained for:

- inventions that are deemed contrary to public order, morality and the existing laws and regulations;
- surgical methods;
- scientific and mathematical methods;
- plants and animals (other than micro-organisms); or
- essential biological processes for production of plants and animals (other than non-biological and micro-biological processes).
Patent applications must be submitted to the Patent Office. If the patent is granted by the Patent Office it is recorded in the General Register of Patents and announced in the Official Patent Gazette. A patent is valid for twenty years from the date of the filing of the application and a simple patent is valid for ten years. Neither of these terms can be extended.

Holders of a patent are permitted to grant licences to other parties based on a licence agreement. Such licence agreements must be registered and announced in the Official Gazette of Patents.

**Trade secrets**
Under Law No. 30 of 2000 regarding Trade Secrets (the Trade Secrets Law), information that is not publicly known about a technology and/or business, that has economic value which can be exploited in business activities, and that is kept secret by the owner, is deemed to constitute a trade secret. Trade secrets may include production methods, processing methods, sales methods, and other pieces of information that meet the statutory criteria. A trade secret is protected for an indefinite period so long as the information/trade secret has not become publicly known.

Trade secret holders have the sole right to use their respective trade secrets and to prohibit or permit third parties to use their trade secrets. The trade secret and any transfer of the same must be registered with the Directorate General of Intellectual Property Rights of the Ministry of Law and Human Rights; the registration is with respect to administrative data only and does not include the substance of the trade secret. Under the Trade Secrets Law, a change in ownership of a trade secret must also be announced in the Gazette of Trade Secrets. Rights to a trade secret may be transferred by way of inheritance, grant, will or testament, written agreement or any other process acceptable by law.

**Industrial designs**
Under the Industrial Designs Law (Law No. 31 of 2000) an industrial design refers to the creation of forms concerning shape, configuration or composition of lines, colours or a mixture of both to create a two or three dimensional form used as a product, consumer good or industrial commodity.

Industrial designs rights are to be registered and announced in the Official Gazette of Industrial Designs. Any third party wishing to use the industrial design must obtain approval from the industrial design rights holder. The term of protection is ten years from the date of filing.

**Enforcement of intellectual property rights**
In the case of counterfeiting or other infringements of intellectual property rights, the owner of such rights can seek relief through civil and/or criminal proceedings. Civil remedies may include injunctive relief, damages, and possibly a court order to hand over goods to the legitimate intellectual property owner. Criminal sanctions of imprisonment and/or fines may also be given for the infringement of intellectual property rights.
Indonesian employment relationships are established through either individual employment contracts or a collective labour agreement. There are two main forms of employment contract:

- an indefinite term contract; and
- a definite term contract (based on the completion of a certain job).

Employment contracts can either be verbal or written. If they are written then they must be in Bahasa Indonesia or dual languages (but Bahasa Indonesia must prevail).

A collective labour agreement (CLA) is an agreement between a labour union registered with the Ministry of Manpower and the employer. A CLA usually sets out working terms and conditions, the rights and obligations of the employer and the labour union, wages, the benefits due to employees, and provisions regarding the procedure for settlement of a dispute between employer and employees. If a labour union wishes to negotiate a CLA with an employer, the employer is obliged to comply. A company which has more than ten employees but does not put in place a CLA must instead have approved workplace rules known as a Company Regulation (Peraturan Perusahaan).

In 2004 Law No. 2 concerning the Settlement of Industrial Disputes was enacted in connection with a labour law reform programme. The other laws introduced in this reform programme were Law No. 21 of 2000 concerning Labour Unions and Law No. 13 of 2003 concerning Employment.

**Working hours and annual leave**

The usual working hours in Indonesia are 7 hours per day (40 hours per week for 6 working days per week) or 8 hours per day (40 hours per week for a 5 day working week). However, under Indonesian law, employees can work additional hours as long as such overtime does not exceed 3 hours per day and 14 hours per week. Different working hours may be stipulated for particular sectors by regulation.

The minimum length of annual leave in Indonesia is 12 days per year and there are mandatory public holidays which are determined periodically by the government. Maternity leave with full pay must be granted for 3 months for female employees. If an employee works on any public holiday then the employer is required to compensate the employee in accordance with regulations regarding overtime.

**Termination of labour contracts**

To terminate an employee’s contract of employment, the employer is required to first negotiate with the employee and, if applicable, the labour union to attempt to reach a settlement. If an agreement cannot be reached, the employer must, except in limited circumstances, obtain approval from the Industrial Relationship Court in order to terminate the employment contract. Termination by the employer is null and void if it is carried out without either the consent of the employee or the court.

Misconduct is viewed as a valid justification for termination of an employee’s contract of employment but, depending on the severity of the misconduct, the court may require evidence of the occurrence of three separate incidents and three consecutive warning letters being issued to the employee in order to permit termination.

An employer may also make redundancies if the company is suffering from excess staff allocations. However, the employer is required to meet specific severance pay requirements. In addition, the employer may terminate an employee’s contract in the event of a change in the status of the company, merger, consolidation or acquisition. However, in these circumstances the employer must grant severance pay as required under the applicable laws and regulations.

Employers who seek to terminate an employee’s employment purely on the basis of incompetence may find it difficult to obtain permission for such termination from the court.

**Severance pay**

When calculating severance pay there are three elements to consider: service wages, merit pay (based on length of service) and compensation. Compensation depends upon the benefits that were provided by the employer, for instance, medical, housing, or any outstanding entitlements for unused annual leave.

Although not required by law, in practice, many employers invest in termination-related insurance.

**Labour unions**

Labour unions in Indonesia are usually company-based unions. Although less common, the formation of non-company based unions are also permitted. Only Indonesian workers are allowed to form and/or be a member of a labour union. Foreign or expatriate members are prohibited. By law, striking is the basic right of the employees of a labour union, however such
strikes must be conducted in a lawful, orderly and peaceful way.

**Foreign employees**

In most circumstances business operations in Indonesia are prohibited from having 100% foreign employees. The percentage of local workers required depends on the work undertaken. Foreign personnel should only be hired in order to transfer technology and/or skills to Indonesian employees. In practice, the policy undertaken by the Ministry of Manpower and Transmigration maintains that there should be at least one Indonesian person employed in the same position or division for every foreign person.

Moreover, for certain business sectors (for instance, fisheries, crop plantation, oil and gas, mining and energy, and forestry) there are positions in the companies which can only be occupied by Indonesian personnel.

In order to hire foreign employees the employer must obtain approval of its Plan to Use Foreign Manpower (Rencana Penggunaan Tenaga Kerja Asing or RPTKA) from the Ministry of Manpower and Transmigration. The RPTKA can be granted for a period of up to 5 years, but it can be extended by the ministry.

**Work Permits**

The employer must obtain an expatriate work permit (Izin Mempekerjakan Tenaga Asing or IMTA) and a limited stay permit (Kartu Izin Tinggal Terbatas or KITAS) for each foreign employee it hires. The IMTA is granted for one year but can be extended.

**Visas**

Applications for Indonesian visas must be submitted to an Embassy or Consulate of the Republic of Indonesia or any other official office designated by the government of Indonesia. Tourist visas and business visas are available for up to 60 days and multiple-visit visas are valid for one year.

**Contribution to insurance schemes and allowances**

Under the Manpower Law and the Employees’ Social Security Law every employee is entitled to the mandatory employees’ social security scheme known as the ‘Jamsostek programme’. The Jamsostek programme consists of:

- work accident insurance;
- old age insurance;
- death benefits; and
- healthcare insurance.

Employee contributions to the programme are made by the employer. For old age insurance, both the employee and the employer contribute. Employers are not required to include foreign employees under the Jamsostek programme.
Dispute resolution

The fundamentals of Indonesia’s judicial system are still based on Dutch colonial laws and codes, although numerous legal reforms have been instituted since independence. Due to concerns regarding the reliability and efficiency of the court system, parties often elect for disputes to be resolved through international arbitration (with a seat in Indonesia or overseas) or other types of alternative dispute resolution.

Civil proceedings
To begin civil court proceedings in Indonesia, a claimant must file a claim with the relevant district court. Under Indonesian law the disputing parties must attempt to settle the dispute via mediation first. If mediation fails then the judge will set a date for the hearing and litigation can begin. There is no discovery of documentation in Indonesia. For admission in an Indonesian court, any documents not drawn up in Bahasa Indonesia must also be accompanied by a translation into Bahasa Indonesia prepared by a sworn translator licensed in Indonesia. Additionally, representation of parties in court can only be undertaken by an Indonesian advocate holding a license issued by the Indonesian Bar Association.

Foreign court judgments will not be enforced in Indonesia (this is one of the reasons why a party may choose to include an arbitration clause in their contracts relating to Indonesia). New court proceedings have to be commenced and the whole matter has to be re-litigated under Indonesian law. However, a foreign judgment may serve as supporting evidence when the matter is re-litigated in Indonesia.

Remedies
An Indonesian court can grant interim remedies once proceedings have commenced in order to, for example, collect further evidence, prevent dissipation of assets or prevent infringing assets from entering the market (such as in the case of intellectual property infringement). Other substantive remedies include compensatory damages, seizure of assets, or a requirement of performance of certain acts. Damages are only given for actual losses suffered and such financial compensation will therefore not include, for instance, anticipatory damages.

Under the Indonesian judicial system, the losing party is required to pay court costs and each party is required to pay their own respective legal costs.

Judicial system
The Indonesian judicial system consists of four main types of court: religious courts, administrative courts, military courts and general courts. The general court system is comprised of three separate levels of general jurisdiction courts: the district courts, high courts (the courts of appeal for decisions made by the district courts) and the Supreme Court (the court of appeal for decisions made by the high courts). A district court is located in every regency and city, while a high court is located in every capital city of provinces.

In addition, Indonesia has a Constitutional Court, which has the authority to perform judicial review and to consider cases where it has been alleged that the president or vice president has acted in breach of the law. Commercial Courts, introduced in 1998, oversee insolvency and bankruptcy issues and, since 2001, intellectual property right cases. Appeals from the Commercial Court are heard in the Supreme Court.

Other specialised courts are described below:

- **Religious courts**: Religious courts in Indonesia have the authority to investigate, adjudicate and give settlement between Muslim people in relation to martial matters, inheritance, testament, and grants that are subject to Islamic law, *awakaf* (property donated for religious and community use) and *shadaqah* (donations or charity).

- **Labour Court**: The Labour Court is organised in the district court environment, and has authority to investigate, adjudicate, and make decisions on labour disputes.

- **Tax Court**: This is the judicial board which exercises judicial power for tax payers or tax guarantors seeking adjudication of tax disputes. The Tax Court has authority to investigate and adjudicate tax disputes and in doing so it has its own procedural law. There is only one Tax Court in Indonesia, located in Jakarta.

- **Commercial courts**: These were originally established for insolvency proceedings. Since 2001, commercial courts have also handled disputes involving intellectual property rights. Indonesia has five commercial courts, located in Jakarta, Makassar, Medan, Surabaya and Semarang.
Arbitration

Arbitration in Indonesia has undergone significant development since the 1999 Law on Arbitration (Law No. 30 of 1999) was introduced. In 2000 there was a complete review of the rules of the Indonesian National Arbitration Body (Badan Arbitrase Nasional Indonesia or BANI). This revised system draws from many of the principles of the UNCITRAL Model. Under the new BANI rules the District Courts have no jurisdiction over disputes where there is a valid arbitration clause in place.

Consequently, foreign companies will often contract that disputes are to be heard by an international arbitral tribunal as there is concern over the corruption in Indonesia and relative inexperience of the Indonesian courts and domestic arbitration bodies. However, although this practice has largely been accepted by the Indonesian government, foreign companies may still find themselves involved in Indonesian litigation proceedings if, for example, they end up in a dispute with an employee or become subject to administrative penalties.

Indonesia is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the International Centre for Settlement of Investment Disputes (ICSID) Convention.

Although there has in the past been some inconsistency in how Indonesian courts have in practice enforced foreign arbitration awards, they should in principle be enforceable against assets in Indonesia if the following conditions are complied with:

- the international arbitral award is issued by a country to which Indonesia is bound by a treaty concerning recognition and enforcement of international arbitration awards (such as the New York Convention);
- the award is not contrary to public order in Indonesia;
- the matter being arbitrated is within the scope of ‘commercial law’ or concerns ‘rights which according to law are fully controlled by the parties to the dispute’; and
- an enforcement order (exequatur) has been obtained from the District Court of Central Jakarta.
Hogan Lovells in Indonesia and Hermawan Juniarto

**Hogan Lovells**
Operating from over 40 offices in Europe, Asia, the Middle East and the Americas, Hogan Lovells is one of the world’s leading international legal practices. We advise many of the world’s largest corporations, financial institutions and governmental organisations.

We regularly act on complex matters involving regulatory affairs, multi-jurisdictional transactions and business ventures as well as some of the most high-profile commercial disputes.

Hogan Lovells offers:

- a unique, high quality transatlantic capability, with extensive reach into the world’s financial and commercial centres;
- particular and distinctive strengths in the areas of dispute resolution, regulation, antitrust, corporate, finance, intellectual property and real estate; and
- access to a significant depth of legal knowledge and resources in many key industry sectors, including energy, financial services, telecommunications media and technology, life sciences and pharmaceuticals, consumer goods, real estate, transport, natural resources and infrastructure.

The firm is committed to client service, commerciality and teamwork. We also have a long and established tradition of providing pro bono legal advice to those parts of society who are often the most disadvantaged and in greater need.

**Hogan Lovells in Indonesia**
Hogan Lovells has been active in Indonesia for many years, giving us an in-depth knowledge of the local market and a good understanding of what it takes to close deals and conduct business in Indonesia.

We have advised on a wide range of transactions in Indonesia, including in Corporate/M&A, projects, energy (including oil and gas) and disputes. Our infrastructure experience includes representing the Municipal Government of Bandar Lampung in relation to the tender of the Bandar Lampung Bulk Water Supply Project and the IIGF in relation to the Sumsel 9 and 10 mine-mouth power project. Our significant experience in the Indonesia oil and gas sector, particularly in relation to the upstream and downstream sectors, includes advising on several high profile transactions such as the landmark US$2.8 billion Donggi-Senoro LNG project in Indonesia.

In April 2012 Hogan Lovells entered into an association with Indonesian law firm, Hermawan Juniarto, as part of its strategy to develop a presence in important commercial, financial and growth markets around the world.

**Hermawan Juniarto**
Hermawan Juniarto is a law firm dedicated to providing a full range of corporate and commercial legal services.

With a team of four partners and 17 associates. The firm has worked closely with the Indonesian government on the formulation of PPP and government procurement regulations and has worked side-by-side with various government departments and their technical and financial advisors regarding project development considerations.

Hermawan Juniarto also boasts strong corporate transactional, capital markets, finance, regulatory and disputes practices, with experience working with both state-owned enterprises and domestic and international companies.

[Hogan Lovells] provides ‘consistent, efficient service and high-quality legal advice’.

*Legal 500 Asia Pacific*

The firm ‘is great to have on your side – it offers the strategic advantages of great working relationships with the authorities, and the ability to advise on local law issues’.

*Chambers Asia Pacific*
## Glossary of terms

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<td>API</td>
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<td>BAL</td>
<td>Indonesia’s Basic Agrarian Law (Law No. 5 of 1960)</td>
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<td>BANI</td>
<td>Indonesian National Arbitration Body (Badan Arbitrase Nasional Indonesia)</td>
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<td>BKPM</td>
<td>Capital Investment Coordinating Board (Badan Koordinasi Penanaman Modal)</td>
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<td>BPK</td>
<td>State Audit Board (Badan Pemeriksa Keuangan)</td>
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<td>BPN</td>
<td>National Land Agency (Badan Pertanahan Nasional)</td>
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<td>BUMD</td>
<td>Region-owned enterprises (badan usaha milik daerah)</td>
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<td>BUMN</td>
<td>State-owned enterprises (badan usaha milik negara)</td>
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<td>Currency Law</td>
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<td>DNI</td>
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<td>DPD</td>
<td>Regional Representatives Council (Dewan Perwakilan Daerah)</td>
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<td>DPR</td>
<td>People’s Representative Council (Dewan Perwakilan Rakyat)</td>
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<td>FTZ</td>
<td>Free Trade Zone</td>
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<td>IAI</td>
<td>Indonesian Institute of Accountants (Ikatan Akuntan Indonesia)</td>
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<td>Indonesia Central Securities Depository</td>
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<td>IIGF</td>
<td>Indonesia Infrastructure Guarantee Fund</td>
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<td>IMTA</td>
<td>Expatriate work permit (Izin Mempekerjakan Tenaga Asing)</td>
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<td>IPP</td>
<td>Independent Power Producer</td>
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<td>KBLI</td>
<td>Indonesian Standard Industrial Classifications (Klasifikasi Baku Lapangan Usaha Indonesia)</td>
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<td>KPK</td>
<td>Corruption Eradication Commission (Komisi Pemberantasan Korupsi)</td>
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<td>KPPU</td>
<td>Commission for the Supervision of Business Competition (Komisi Pengawas Persaingan Usaha)</td>
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<td>MP3EI</td>
<td>Master Plan for Acceleration and Expansion of Indonesian Economic Development 2011 to 2025 (Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia)</td>
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<td>MPR</td>
<td>People’s Consultative Assembly (<em>Majelis Permusyawaratan Rakyat</em>)</td>
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<td>New York Convention</td>
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<td>Taxpayer Identification Number (<em>Nomor Pengenal Wajib Pajak</em>)</td>
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<td>PDAM</td>
<td>Regional drinking water companies (<em>perusahaan daerah air minum</em>)</td>
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<td>PKLN Team</td>
<td>Offshore Commercial Loan Team (<em>Tim Pinjaman Komersial Luar Negeri</em>)</td>
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<td>PPA</td>
<td>Power Purchase Agreement</td>
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<td>PPATK</td>
<td>Indonesian Financial Transaction Report and Analysis Centre (<em>Pusat Pelaporan dan Analisis Transaksi Keuangan</em>)</td>
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<td>PPP</td>
<td>Public Private Partnership</td>
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<td>PSAK</td>
<td>Indonesian General Accepted Accounting Principles (<em>Pernyataan Standar Akuntansi Keuangan</em>)</td>
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<td>PT Indonesia Infrastructure Finance</td>
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<td>PT SMI</td>
<td>PT Sarana Multi Infrastruktur (Persero)</td>
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<td>RPTKA</td>
<td>Plan to Use Foreign Manpower (<em>Rencana Penggunaan Tenaga Kerja Asing</em>)</td>
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<td>SKK Migas</td>
<td>Special Task Force for Upstream Oil and Gas Activities</td>
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<td>Ministry of Trade (<em>Tanda Daftar Perusahaan</em>)</td>
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