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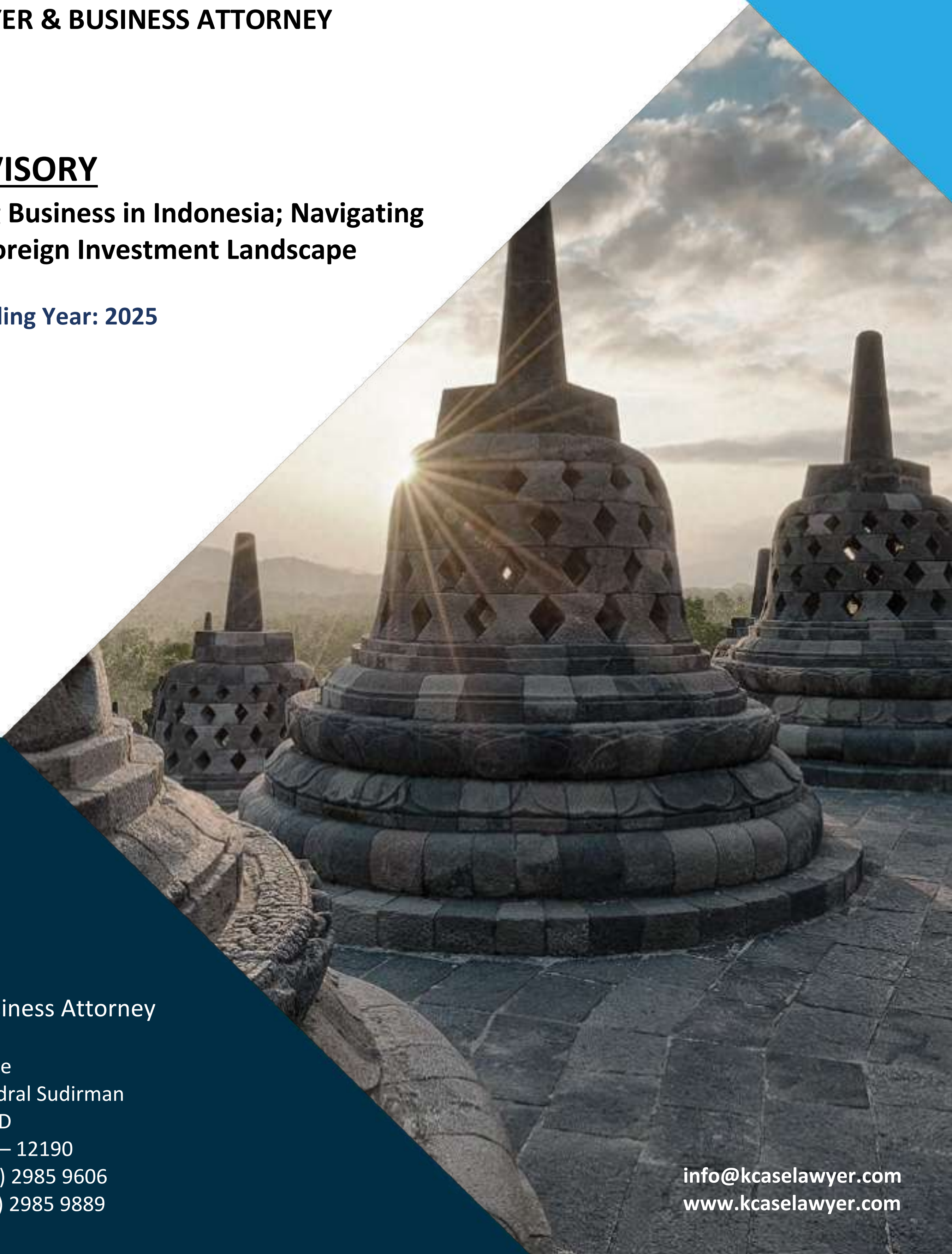
LAWYER & BUSINESS ATTORNEY

ADVISORY

Doing Business in Indonesia; Navigating the Foreign Investment Landscape

Prevailing Year: 2025



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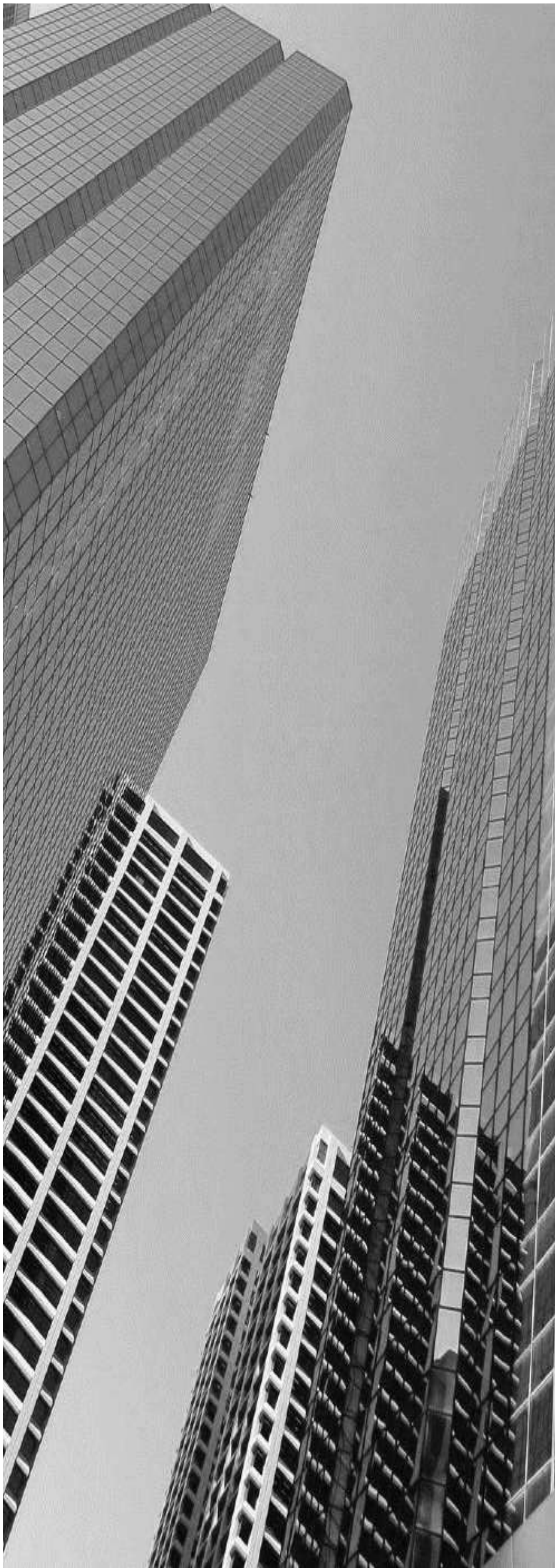
FOREWORD

Indonesia, a country known for its strategic position, robust economic growth, and youthful demographic, has become a key focus for foreign investment. However, entering this market requires a nuanced understanding of its unique economic, political, and regulatory environment.

This advisory offers a thorough examination of the opportunities and risks within Indonesia's market, highlighting key industries and emerging trends. This document covers strategic and practical recommendations to help investors navigate risks and enhance returns. It underscores the need for a deep understanding of local regulations, political shifts, and cultural considerations to thrive in Indonesia's dynamic business climate.

By providing a clear, research-based framework, this advisory aims to empower investors with the knowledge necessary to make informed, strategic choices. With significant long-term potential, Indonesia offers ample opportunities for those who approach it with thorough preparation and foresight.



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I. INDONESIA'S FOREIGN INVESTMENT REGIME

Indonesia is a Southeast Asian country located between the Indian and Pacific oceans. It is the world's fourth most populous country, with a population of over 275 million people. Indonesia has a diverse and rapidly growing economy, making it an attractive destination for foreign investment. The country is rich in natural resources, including oil, gas, timber, and minerals, and it also has a large and growing consumer market. Indonesia has a stable political environment and a pro-business government that is committed to attracting foreign investment. In Indonesia, investors will find a welcoming and supportive business climate that offers a range of investment opportunities.

1. Indonesia's Investment Climate

Indonesia is a country with significant economic opportunities for investors due to its abundance of natural resources and strategic location along major sea lanes. Its GDP was estimated around USD 1.388 billion in 2024 where it grew 4.95% year-on-year.[1] Indonesia has a mixed economy, with increased economic activity in the manufacturing and service sectors, and is a major producer of a variety of commodities, including palm oil, cocoa, tin, natural rubber, and nickel.

The Indonesian government has set a goal of being among the top 10 global economies by 2025, and has implemented key legislation to attract investment in various sectors. This includes the development of six economic corridors (Sumatra, Java, Kalimantan, Sulawesi, Bali-Nusa Tenggara, and Papua-Maluku Islands) under the Master Plan of Acceleration and Expansion of Indonesia Economic Development 2011-2025 ("**MP3EI**"). The MP3EI also aims to strengthen national connectivity locally and globally, and improve human resources capability, science,

[1] BPS – Statistics Indonesia, Indonesia's Economic Growth in Q3-2024 Was 1.50 Percent (Q-to-Q), as accessed through: https://www.bps.go.id/en/pressrelease/2024/11/05/2382/indonesia-s-economic-growth-in-q3-2024-was-1-50-percent--q-to-q-.html on January 3, 2025

and technology. The government is focusing on eight key programs to achieve this goal: agriculture, mining, energy, industrial, marine, tourism, telecommunications, and the development of strategic areas.

2. **Capital City Relocation**

In January 2022, Indonesia passed a law that will eventually relocate the national capital from Jakarta to a new, yet-to-be-built city called Nusantara, or often referred to as Nusantara Capital City/*Ibu Kota* Nusantara ("**IKN**") in the East Kalimantan province. The government has outlined several goals for the move, including the redistribution of wealth, reduction of pollution and traffic, and reduction of environmental impact in Jakarta. However, this does not mean that Jakarta will be deserted or abandoned, simply that the development of infrastructure and government will be more focused on the new Capital City. This move will provide ample opportunities for business in several sectors such as the infrastructure, trade, energy, and tourism sectors, to name a few.

The project will provide opportunities for companies in sectors such as urban development, utilities, toll manufacturing, and environmental consulting, as well as those involved in designing smart cities. Investments in infrastructure, such as port development, in East Kalimantan could also increase industrial productivity in Indonesia's eastern regions, which make up 64% of the country's total land area.

The government's sea toll program, initiated in 2015, aims to develop forty-one new ports in the country, including in the eastern regions of Maluku and Papua, potentially creating new economic hubs and shipping lanes in the east. The development of new trade routes through eastern Indonesia could also benefit the East Kalimantan province, which is known for its abundant commodities such as coal, gold, and oil.

The government is also aiming to utilize renewable energy sources for the new capital's electricity needs, presenting potential opportunities for foreign investors in sectors such as solar energy, hydroelectric dams, wind farms, and biomass generators. There is also the possibility of developing a large-scale electricity storage system that could utilize power from the neighboring North Kalimantan province, where a hydroelectric dam is being built.

In addition to economic opportunities, the relocation to IKN presents potential for growth in the tourism industry. The government is targeting over 20 million tourists in 2019 and is looking to diversify destinations beyond Bali and Lombok. Improving infrastructure in East Kalimantan could boost its tourism industry and reduce its reliance on commodities. The province already has more than 500 tourist sites, with plans to preserve and protect more nature reserves and tropical forests. There is potential for the development of international hotel chains and high-end luxury resorts, as well as the domestic market of over 40 million travelers, which is expected to grow with Indonesia's increasing middle class.

Until now, the government has issued several government regulations, such as Government Regulation No. 12 of 2023 on The Granting of Business Licensing, Ease of Business, and Investment Facility for Business Across in the Nusantara Capital City as amended lastly by Government Regulation No. 29 of 2024. The law focuses on the issuance of business licenses, ease of doing business and the various investment facilities and incentives that are available to business actors who engage in business activities within IKN and certain regions of Kalimantan that are categorized as part of the IKN economic superhub. The amendment further clarifies the criteria for reviewing the capital city's detailed spatial plan as a strategic national policy change, in alignment with IKN conditions and relevant laws. Environmental approvals, a key requirement for business licenses, will now be issued based on either an environmental feasibility decision or a statement of willingness to manage and monitor the environment. These approvals will be granted by the IKN Authority, with further details to be outlined in a forthcoming regulation. The amendment also expands the sources of funding available to the IKN Authority, allowing it to appoint certified institutions or experts for verifying approval processes and business licensing requirements. Additionally, the IKN Authority's powers have been broadened to include responsibilities for land rights management, covering planning, security, administration, and supervision & control.[2]

In order to accelerate the development process, the government issued a follow-up to the mandate as stipulated by The Head of the IKN Authority Regulation No. 7 of 2024 on Procedures for the Granting of Ease of Doing Business and Investment Facilities in the Capital City of Nusantara. The authority will grant an exemption from the obligation to pay compensation for the use of foreign workers until 2035 for businesses employing foreign workers on strategic government projects within IKN.[3] This exemption also applies to government agencies, foreign representatives, international organizations, social institutions, religious institutions, and certain positions in educational institutions, as per applicable law.

Following the release of Regulation No. 12 of 2023, The Head of the IKN Authority dispatched a supporting regulation, The Head of the IKN Authority Regulation No. 5 of 2024 on Details of the Scope of Business Sectors Granted Corporate Income-Tax Reduction Facilities Within the Capital City of Nusantara and Partner Regions. This regulation details the scope of business sectors eligible for corporate income tax reduction facilities within IKN and its Partner Regions. However, Regulation 5/2024 specifies the types of business sectors and minimum investment values

[2] Article 16 (5), Government Regulation No. 12 of 2023 on The Granting of Business Licensing, Ease of Business, and Investment Facility for Business Across in the Nusantara Capital City as amended lastly by Government Regulation No. 29 of 2024

[3] Article 22 (2), Regulation No. 7 of 2024 on Procedures for the Granting of Ease of Doing Business and Investment Facilities in the Capital City of Nusantara

required to qualify for these tax reductions. Applications for the tax reductions must be submitted through the Online Single Submission (OSS) system. [4]

Moreover, foreign investment in the IKN now possesses the right of use that has been extended for a maximum of 80 years through the first cycle, which can be extended for a second cycle for a maximum of 80 years based on criteria and evaluation stages.[5]

3. Indonesia's Political System

Indonesia is a presidential representative democratic republic, with a multi-party system. The President of Indonesia is the head of state and government, and is elected by popular vote for a five-year term. The President is responsible for implementing national policies and appointing ministers to head the various government agencies.

The Indonesian parliament, known as the People's Consultative Assembly (Majelis Permusyawaratan Rakyat – "**MPR**"), is the highest legislative body in the country. It is composed of two houses: the House of Representatives (Dewan Perwakilan Rakyat – "**DPR**"), which is elected by popular vote, and the Regional Representative Council (Dewan Perwakilan Daerah – "**DPD**"), which represents the interests of the various regions of Indonesia. The MPR is responsible for passing laws and constitutional amendments, as well as issuing decrees.

The Indonesian government is divided into three branches: the executive branch, headed by the President and the Cabinet; the legislative branch, consisting of the MPR, DPR, and DPD; and the judicial branch, comprising the courts. The judicial

[4] Article 4, Regulation No. 5 of 2024 on Details of the Scope of Business Sectors Granted Corporate Income-Tax Reduction Facilities Within the Capital City of Nusantara and Partner Regions
[5] Government Regulation No. 12 of 2023 on the Issuance of Business Licenses, Ease of Doing Business and Investment Facilities for Business Actors Within the Capital City of Nusantara as latest amended by Government Regulation No. 29 of 2024

branch is independent of the other two branches and is responsible for interpreting and applying the law. The Indonesian legal system is administered by a number of courts, including the Supreme Court, the High Court, and the District Court. There are also several specialized courts, including the State Administrative Court, the Commercial Court, and the Religious Court.

4. Indonesia's Legal System

Indonesia has a civil law system, which means that its legal system is based on a comprehensive, codified body of laws that are meant to be applied uniformly across the country. The Indonesian legal system is influenced by a number of sources, including Dutch colonial law, Islamic law, and indigenous custom.

The hierarchy of laws in Indonesia begins with the Constitution, which is the supreme law of the land. The Constitution sets out the fundamental principles of the Indonesian state, including its system of government, the rights and duties of citizens, and the structure and powers of the various branches of government. Below the Constitution are a series of statutory laws arranged in a hierarchal manner, as follows:[6]

- People's Consultative Assembly/MPR Decree: The People's Consultative Assembly is the highest legislative body in Indonesia and has the authority to issue decrees which have the force of law and must be enforced by the courts.
- Written Laws/ Government Regulation In Lieu of Law: legislation enacted by the DPR or the regulations enacted by the government to replace them.
- Government Regulations: regulations that are issued by the President which are used to implement or supplement existing laws on a wide range of subjects.

[6] Article 7, Law No. 12 of 2011 on the Formulation of Rules

- Presidential Regulations: decrees issued by the President of Indonesia that have the force of law.
- Ministerial Regulations: regulations issued by the various ministers of the Indonesian government.
- Provincial regulations: regulations issued by provincial governments;
- Regency/municipal regulations: regulations issued by regency/municipal governments.

The Indonesian legal system also recognizes the role of non-statutory sources of law, such as customary law and Islamic law. In some cases, these non-statutory sources may be applied in conjunction with statutory laws or as an alternative to them.

5. **Obstacles Towards Investment in Indonesia**

Indonesia has strong economic potential, but faces several challenges that may discourage foreign investment. One such challenge is corruption, which remains a significant impediment to Indonesia's development. In 2022, Transparency International scored Indonesia thirty-four out of one hundred on a scale from zero (highly corrupt) to one hundred (very clean), indicating that there is still room for improvement.[7]

Bureaucracy is another challenge that is often cited by international investors as a barrier to investing in Indonesia. This is due, in part, to the disharmony between regulations made by regulators at the central government and at the regional level. The government's policy of regional autonomy has led to a proliferation of regional regulations that are not always consistent with central legislation, creating confusion and uncertainty for investors. Officials in various industry

[7] Transparency International, Corruption Perceptions Index, as accessed through: https://www.transparency.org/en/countries/indonesia on January 14, 2023.

sectors are also given significant discretionary powers, which can further contribute to regulatory uncertainty. Additionally, there are general concerns about the efficiency of contract enforcement in Indonesia. To encourage increased participation from international investors, it would be helpful to have clearer regulations, relaxed restrictions on foreign investment, and streamlined permit applications.

Infrastructure is another challenge for investors in Indonesia, particularly in the middle and eastern parts of the country. However, the insufficiencies in the infrastructure sector also present opportunities for foreign investors, particularly through public-private partnerships ("**PPP**"). The Indonesian government has tended to promote a PPP model that excludes support through the issue of government guarantees, but PPPs are increasingly popular among foreign investors. Other key challenges in the Indonesian legal system include conflicting laws from different authorities, a lack of comprehensive resources, lengthy and cumbersome court proceedings, and judges' discretion, which can lead to inconsistency in judicial interpretation.

II. HOW TO INVEST IN INDONESIA

In Indonesia, foreign investments must be made by either establishing a foreign limited liability company ("**PT PMA**") or by purchasing already-existing shares in an existing company, which will then be converted into a PT PMA ("**PT PMA**").[8] A company with foreign capital invested in it becomes a PT PMA, or *Perseroan Terbatas Penanaman Modal Asing*. PT PMA are subject to the same regulations as domestic Indonesian businesses, but they are allowed to have foreign ownership and to bring in foreign capital. If the foreign direct investment is done by purchasing shares in an already existing domestic company, the company itself will also have to be converted into a PT PMA, for which there is a process we can help with.

In terms of legal requirements, a PT PMA must be registered with the Indonesian government and must comply with all relevant regulations and laws. This includes everything from filing annual reports and financial statements, to complying with labor and employment laws.

1. **Basic Requirements of PT PMA**

   A PT PMA must have at least two shareholders, which is a basic requirement for all Companies in Indonesia.[9] Further, the minimum paid-up capital for a PT PMA is IDR 10 billion (around $620,000).[10] This requirement is in place to ensure that PT PMA companies have the financial resources to support their operations. A PT PMA must also have an investment value of at least IDR 10 billion, or more depending on the amount of business fields the company partakes in.[11] However, this minimum investment value can amount to less than ten billion rupiah in the case of technology-based startups in special economic zones.[12]

[8] Article 5(2), Law No. 25 of 2007 on Capital Investment ("**Investment Law**")
[9] Article 7, Law No.40 of 2007 on Limited Liability Companies ("**Company Law**")
[10] Article 12 (6&7), Capital Investment Coordinating Board (BKPM) Decree No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities
[11] Article 12 (1&2), *Ibid*
[12] Article 8(2), Presidential Regulation No.10 of 2021 on Investment Business Fields

2. **Minimum Capital Requirements**

The Indonesian Company Law stipulates that the minimum issued and paid-up capital must be at least 25% of the authorized capital.[13] This means that the required issued and paid-up capital of IDR 10 billion represents only 25% of the actual authorized capital. This framework helps create a stable and attractive investment climate, which in turn supports the inflow of foreign investment into Indonesia.

Furthermore, the required issued and paid-up capital of IDR 10 billion must be supported by a valid proof of deposit, which must be submitted electronically to the Minister of Law within 60 (sixty) calendar days from the signing date of the deed of establishment.[14] To facilitate compliance, the Minister of Law provides an alternative by allowing a statement letter – signed by all members of the Board of Directors, founders, and members of the Board of Commissioners – to serve as valid proof of deposit.[15] This provision enables the actual fulfilment of the issued and paid-up capital requirement to be realized during a capital increase process, thereby offering greater flexibility in meeting regulatory obligations.

In addition to the issued and paid-up capital requirement, there is also a minimum investment value of IDR 10 billion (or more in the case of multiple business fields) that foreign investors must commit to in order to invest in Indonesia. However, certain exceptions apply to this minimum investment value requirement, including the following:[16]

[13] Article 33 (1), Company Law.

[14] Article 33 (2) of the Company Law and Article 4 (2) of the Government Regulation No. 8 of 2021 Company Authorized Capital and Registration of Establishment, Change and Dissolution of Company that Meets The Criteria for Micro- and Small-Scale Businesses

[15] Article 13(4)(c)(1) of the Regulation of the Minister of Law and Human Rights No. 1 of 2016 on

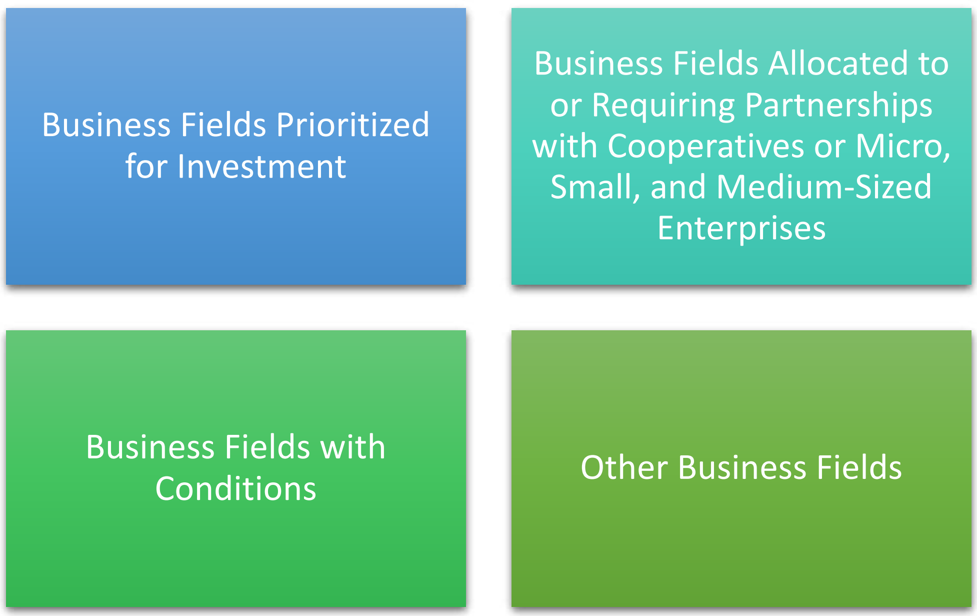
[16] Article 12 (3), Capital Investment Coordinating Board (BKPM) Decree No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities

1) For large-scale trading business activities, minimum IDR 10 billion is required per four digits of KBLI;
2) For food and beverage service business activities, minimum IDR 10 billion is required per two digits of KBLI per one location;
3) For construction service business activities, minimum IDR 10 billion is required per four digits of KBLI;
4) For industrial business activities that produce products with different five-digit KBLIs in one production line, minimum IDR 10 billion is required outside of land and building assets;
5) For property development and business activities in the form of integrated building or housing complex, the investment value regulations include land and building;
6) For property development and business activities in the form of property units not in one building, the investment value regulations exclude land and building.

3. Business Sector Limitations

The Indonesian Positive List is a list of sectors and activities in the Indonesian economy that are open to foreign investment. The Positive List is issued by the Indonesian government and is intended to provide guidance to foreign investors on which sectors and activities they are allowed to invest in. Under the Positive List, all business sectors are open to investment unless specifically regulated otherwise.[17]

The Indonesian Positive List is further divided into four categories, as follows: [18]



1) Priority Business Fields[19]

Criteria for inclusion in priority business fields are as follows:

a) Included as part of national strategic programs/projects;

b) High capital and/or labor-intensive;

c) Utilize advanced technology;

[17] Article 2, Presidential Regulation No.10 of 2021 on Investment Business Fields as last amended by Presidential Regulation No. 49 of 2021
[18] Article 3, *Ibid*
[19] Article 4, *Ibid*

d) Oriented towards export/import substitution; and/or
e) Oriented towards research, development, and innovation activities.

Investors of priority business sectors are granted with fiscal incentives and/or non-fiscal incentives. The fiscal incentives consist of taxation and customs incentives as elaborated below:

Taxation Incentives

1) tax allowance for investment in certain business sectors and/or in certain areas;
2) corporate income tax deduction (tax holiday); or
3) deduction of corporate income tax and net income facilities for investment as well as reduction in gross income for certain business activities (investment allowance), including:
   a) reduction of net income for new investment or business expansion in certain business sectors that are labor-intensive industries; and/or
   b) reduction of gross income for organizing work practice, apprenticeship, and/or learning activities in the framework of human resources guidance and development based on certain competency.

Customs Incentives

Customs incentives in the form of duty import duty exemptions for the import of machinery, goods, and materials for industrial construction or development within the investment framework.

Meanwhile, the non-fiscal incentives include ease of business licensing, provision of supporting infrastructure, guarantee of energy availability, guarantee of raw materials availability, immigration, labor, and other facilities in accordance with the provisions of laws and regulations.

2) Business Fields Allocated to or Requiring Partnership with Cooperatives or Micro, Small, and Medium-Sized Enterprises (MSMEs)[20]

This category includes:

a) Business fields allocated for cooperatives and MSMEs; and

b) Business fields that are open to large-scale businesses in partnership with Cooperatives and UMKM.

Business sectors that are allocated for cooperatives and UMKM, are determined based on the following criteria:

a) Whether business activities that do not use technology or that use simple technology;

b) Whether business activities that are special in nature and labor intensive in nature, and have a special cultural heritage and are hereditary; and/or

c) Whether the capital for the activity does not exceed Rp10.000.000.000,- (ten billion rupiah), excluding the value of land and buildings.

Furthermore, business sectors that are open to large enterprises in partnership with cooperatives and UMKM are determined on the following criteria:

a) Business sectors that are commonly undertaken by cooperatives and UMKM; and/or

b) Business sectors that are encouraged to enter the large enterprises supply chain. In addition, the business sectors that are allocated for and which shall be conducted in partnerships with cooperatives and UMKM, are detailed in Appendix II Presidential Regulation 10/2021.

[20] Article 5, *Ibid*

3) Business Fields with Conditions[21]

This category includes business fields open to all investors but subject to the following requirements:

a) Investment requirements for domestic investors;

b) Investment requirements related to foreign ownership, which excludes the following:

   i. Investment carried out in certain business fields approved before the issuance of Presidential Regulation 10/2021, unless the restrictions established in Presidential Regulation 10/2021 are more favourable for the investor; or

   ii. Investors who have obtained special rights based on agreements between their country and Indonesia, unless new restrictions established in Presidential Regulation 10/2021 are more favorable for the investor.

c) Investment requiring special permits;

d) Other investment requirements, such as restricted and closely monitored business fields in the control and supervision of alcoholic beverages.

The requirements in this category do not apply to investment activities located in special economic zones and indirect investment activities through the Indonesia Stock Exchange.

4) Other Business Fields[22]

Business fields in this category are open to all investors without any additional requirements. These sectors and activities comprise most forms

[21] Article 6, *Ibid*
[22] Article 3(2), *Ibid*

of businesses and are considered to be the most attractive to foreign investors.

5) **Prohibited Business Fields**

There also exists a list of business fields that cannot be entered into under any conditions, as follows:[23]

a) Cultivation and industry of Category I Narcotics;
b) All forms of gambling and/or casino activities;
c) Capture of fish species listed in *Appendix I Convention on International Trade in Endangered Species of Wild Fauna and Flora* ("**CITES**");
d) Utilization or extraction of corals and utilization or extraction of shells from nature used for building materials/limestone/calcium, aquariums, and souvenirs/jewelry, as well as live or dead corals from nature;
e) Chemical weapon manufacturing industry; and
f) Industrial chemical and ozone-depleting substance manufacturing industry.

The Indonesian Positive List is updated periodically, and foreign investors are encouraged to consult the latest version of the list before making any investment decisions in Indonesia, which our lawyers can assist with. The currently applicable Positive List is regulated in Presidential Regulation No.10 of 2021, with the subsequent amendments.

4. Investment Activity Report

All PT PMA have a reporting obligation called the Investment Activity Report ("**LKPM**").[24] The LKPM must be submitted online and periodically through the OSS

[23] Article 12, Investment Law
[24] Article 5, Capital Investment Coordinating Board Regulation No.5 of 2021 on Guidelines and Procedures for Supervision of Risk Based Business Licensing

system. Investors must submit LKPM every three months, and an annual report every year. The respective deadlines are as follows:[25]

i. Quarterly Report 1: April 10 of the respective year.
ii. Quarterly Report 2: July 10 of the respective year.
iii. Quarterly Report 3: October 10 of the respective year.
iv. Quarterly Report 4: January 10 of the year after the respective year.

5. Import Limitations

There are certain limitations to items that can be imported by companies, whether they are finished goods to be resold or raw materials to be further processed. The reason behind these limitations can be deduced based on the criteria of the items on the list. Goods that are prohibited from being imported must fulfil one of the three following criteria:[26]

a. related to the protection of health, safety of humans, animals, fish, plants and the environment;
b. related to national security, national interests, or public interests, including social, cultural, and public morals; and/or
c. include natural plants and wildlife that must be preserved.

The first category includes goods that may pose a threat to humans, animals, fish, plants, and the environment. These goods may include hazardous chemicals, contaminated food, or illegal drugs that may harm the population. By prohibiting the importation of these goods, the government aims to ensure that the public is not exposed to harm or danger. The second category includes goods that may undermine national security or public interests, including social, cultural, and public morals. These goods may include weapons, explosives, or goods that may promote religious or ethnic tensions that may threaten the stability of the country. By prohibiting the importation of these goods, the government aims to maintain social stability and

[25] Article 32(7)(b), *Ibid*
[26] Article 10(3), Government Regulation Number 29 of 2021 on Implementation of the Trade Sector

national security. The third category includes goods that include natural plants and wildlife that must be preserved. These goods may include endangered species, rare plants, or illegally harvested timber that may harm the environment and natural resources of the country. By prohibiting the importation of these goods, the government aims to protect the country's biodiversity and ecosystem.

Specifically, the latest list of items that are prohibited can be found in Annex II of Regulation of the Minister of Trade Number 40 of 2022.[27] In general, these encompass:

a. Goods prohibited from being imported in the form of certain types of sugar;
b. Goods prohibited from being imported in the form of certain types of rice;
c. Goods prohibited from being imported in the form of ozone-depleting substances;
d. Goods prohibited from being imported in the form of used bags, used sacks, and used clothes;
e. Goods prohibited from being imported in the form of Goods with a refrigerated-based system which use Chlorofluorocarbon ("**CFC**") and Hydrochlorofluorocarbon 22 ("**HCFC-22**") both in empty or full condition;
f. Goods prohibited from being imported in the form of certain drug ingredients and foods;
g. Goods prohibited from being imported in the form of toxic and hazardous materials;
h. Goods prohibited from being imported in the form of registered hazardous and toxic waste, and non-hazardous and toxic waste;
i. Goods prohibited from being imported in the form of hand tools; and
j. Goods prohibited from being imported in the form of medical devices containing mercury,

[27] Regulation of the Minister of Trade Number 40 of 2022 on Amendment to Regulation of the Minister of Trade Number 18 Year 2021 Concerning Export and Import Prohibited Goods

There are sanctions for failing to comply with these regulations,[28] but businesses and individuals are expected to comply with these regulations regardless to maintain the integrity of Indonesia's economy and environment. One thing to note is that these regulations may be updated by the Indonesian government at any time, and it is important to always use the latest version of the regulations.

6. **Field Inspections**

These are done by the relevant government agencies and may be conducted through direct or virtual means. These inspections may include administrative and physical examination, testing, and mentoring and counselling. All businesses will be subject to at least one annual field inspection for each of their locations. However, medium-high risk and high-risk businesses will be subject to field inspection twice a year. If a low-risk or medium-low risk business is deemed "compliant" by the inspector, it may be exempt from a field inspection in the following year (or only one inspection for medium-high risk and high-risk businesses).

7. **Relevant International Instruments for PT PMA**

In conducting its business, a PT PMA with international scope may wish to take into account several international instruments. Following are a few examples as well as their application.

a. **CISG, PICC, United Nations Convention on the Assignment of Receivables in International Trade**

i. About the International Instruments:

The Convention on Contracts for the International Sale of Goods ("**CISG**") is a treaty that sets out the rules and standards that apply to contracts for the sale of goods between parties from different countries. It was adopted by the United Nations in

[28] Article 112, Law Number 7 of 2014 on Trade

1980 and has been ratified by more than ninety countries. The CISG applies to contracts for the sale of goods that are to be delivered to a buyer in a country that has ratified the treaty, unless the parties to the contract have explicitly excluded the CISG or have chosen the laws of a different country to govern the contract. While Indonesia has not ratified the CISG, it can still be used as the basis for PT PMA trading goods in Indonesia by designating a ratifying country's law as the governing law of the contract.[29]

The UNIDROIT Principles of International Commercial Contracts ("**PICC**") are a set of principles that provide guidance on the interpretation and application of international commercial contracts. They were developed by the International Institute for the Unification of Private Law and were first published in 1994. The PICC are widely recognized and used by courts, arbitrators, and parties to international commercial contracts around the world. The PICC are not themselves a treaty or a legally binding instrument, but rather a set of principles that are intended to reflect generally accepted practices and norms in international commercial contracts. They are designed to be used as a supplement to national laws and to provide guidance in situations where national laws may be unclear or inadequate. They can also apply in cases when the parties have agreed that their contract be governed by them.[30]

The United Nations Convention on the Assignment of Receivables is an international treaty that sets out the rules and procedures for the assignment of receivables, which are financial claims that a creditor has against a debtor. The convention is intended to provide a uniform and predictable legal framework for the assignment of receivables in cross-border transactions, which involves the transfer of financial claims from one party to another in different countries. The convention applies to

[29] Article 1 (1)(b), United Nations Convention on Contracts for the International Sale of Goods
[30] Preamble, UNIDROIT Principles of International Commercial Contracts

the assignment of both domestic and international receivables, and it covers various types of receivables, including trade receivables, consumer receivables, and financial receivables. It also applies to both simple and structured assignments, which are arrangements in which multiple receivables are bundled together and assigned as a single financial instrument. The convention has been adopted by a few countries around the world, including the United States, and has been ratified by several others. It is administered by the United Nations Commission on International Trade Law ("**UNCITRAL**"), which is a body that promotes the harmonization and unification of international trade law.

ii. KBLI and Relevant Licenses:

In Indonesia the business fields that can make use of these instruments are the ones related to commerce. Depending on what the goods are that are being sold, and whether the sale is in bulk or retail, the KBLI and Relevant Licenses will differ greatly. For instance, the retail sale of furniture falls under KBLI 47591, and requires only a Registration of Goods Related to Security, Safety, Health and the Environment ("**K3L**"), while the bulk sale of furniture falls under KBLI 46491 and requires a Certificate of Registration of a Distributor or Agent of Goods and/or Services in addition to the aforementioned K3L.

b. Basel Accords

i. About the International Instruments:

The main purpose of the Basel Accords is to ensure that banks have sufficient capital to absorb unexpected losses and to maintain the stability of the financial system. The Basel Accords are designed to be flexible and adaptable to changing economic conditions and financial market developments. There have been three main Basel Accords, known as Basel I, Basel II, and Basel III. Each of these accords has updated and revised the previous one, with the goal of improving the soundness and stability of the banking system.

Basel I, which was adopted in 1988, established the first minimum capital requirements for banks and introduced the concept of risk-weighted assets, which are used to calculate the amount of capital that a bank must hold. Basel II, which was adopted in 2004, further refined the risk-weighted asset calculation and introduced the concept of operational risk, which is the risk of loss due to inadequate or failed internal processes, systems, or human errors. Basel III, which was adopted in 2010 and fully implemented by 2019, further strengthened the capital and liquidity requirements for banks in response to the financial crisis of 2007-2009. It introduced new requirements for banks to hold higher levels of high-quality capital and to hold more liquid assets, such as cash and government bonds, to ensure that they have sufficient resources to meet their financial obligations during times of stress. Indonesia is a member country of the Basel Accords and have adopted and implemented the minimum capital and liquidity requirements set out in the accords in several national regulations.[31]

ii. KBLI and Relevant Licenses:

The KBLI for a Conventional Bank is 64121. They are not required to have a specific PB UMKU, but the application to obtain a business license requires certain specific documents, for instance Form Number VII.BP.2.[32]

c. Hague-Visby Rules, Rotterdam Rules, Hamburg Rules, Basel Convention

i. About the International Instruments:

[31] POJK Number: 11/POJK.03/2016 Concerning the Minimum Capital Adequacy Requirement for Commercial Banks; SEOJK Number 42/SEOJK.03/2016 concerning Guidelines for Calculation of Risk-Weighted Assets for Credit Risk Using the Standard Approach SEOJK Number 24/SEOJK.03/2016 concerning Calculation of Risk-Weighted Assets for Operational Risk Using the Basic Indicator Approach SEOJK Number 38/SEOJK.03/2016 concerning Guidelines for Using Standard Methods in Calculating the Minimum Capital Adequacy Requirement for Commercial Banks by Taking Market Risk into Account; and more.

[32] Attachment to Regulation of the Head of the Commodity Futures Trading Regulatory Agency Number 17/BAPPEBTI/KP/V/2000 on Guidelines for Approval of Commercial Banks as Margin Deposit Banks, Compensation Funds, and Guarantee Funds

These instruments are to be used in the field of International Transportation and Logistics. The Hague-Visby Rules are a set of rules that govern the rights and obligations of carriers and shippers in the international carriage of goods by sea. They were adopted in 1968 and have been widely adopted by countries around the world. The main purpose of the rules is to provide a uniform legal framework for the contract of carriage of goods by sea and to protect the rights and interests of the parties involved.

The Rotterdam Rules is a more recent set of rules that were adopted in 2009 and which aim to modernize and harmonize the legal framework for the international carriage of goods by sea. They cover a wide range of issues, including the rights and obligations of carriers and shippers, the liability of carriers for loss or damage to goods, and the application of the rules to multimodal transport.

The Hamburg Rules is another set of rules that deal with the international carriage of goods by sea. They were adopted in 1978 and have been ratified by a number of countries around the world. The main purpose of the rules is to provide a uniform legal framework for the contract of carriage of goods by sea and to protect the rights and interests of the parties involved.

The Basel Convention is an international treaty that regulates the movement of hazardous materials, including chemicals, wastes, and hazardous substances, between countries. It was adopted in 1989 and has been ratified by most countries around the world. The main purpose of the convention is to protect human health and the environment from the negative effects of hazardous materials and to ensure that the movement of such materials is carried out in a safe and environmentally sound manner.

The Hague-Visby Rules and the Hamburg Rules are both widely adopted by countries around the world and have been incorporated into the national laws of many countries, including Indonesia. These rules apply to the international carriage of goods by sea and set out the rights and obligations of carriers and shippers, as well as the liability of carriers for loss or damage to goods.

The Rotterdam Rules, on the other hand, have not yet been widely adopted and are not in force in Indonesia. However, they may still be relevant to a maritime shipping company operating in Indonesia if the company is involved in the international carriage of goods by sea and the rules are specifically referenced in the contract of carriage or are otherwise agreed to by the parties involved. It is also possible that a maritime shipping company operating in Indonesia may be subject to the provisions of the Basel Convention if it is involved in the movement of hazardous materials by sea.

ii. KBLI and Relevant Licenses:

The KBLI for a Company intending to operate in the international shipping industry is either 50141 or 50142 depending on the goods being shipped. KBLI 50142 refers to the shipping of dangerous goods, or hazardous and toxic waste materials. In this case there are a nine PB UMKU that must be procured, such as Proof of Vessel Registration to Regional Fisheries Management Organizations, and Ship Standard Certificate, among other things.

d. ITU Radio Regulations

i. About the International Instrument:

The International Telecommunication Union ("**ITU**") Radio Regulations are a set of rules and technical standards that govern the use of radio frequencies and the operation of radio communication systems worldwide. They are developed and maintained by the ITU, which is a United Nations agency that coordinates global telecommunications.

The ITU Radio Regulations are designed to ensure the efficient and orderly use of the radio frequency spectrum, which is a limited natural resource that is essential for a wide range of communication services, including television, radio, mobile phones, satellite communications, and many others. The radio frequency spectrum is divided into different bands, each of which is allocated to specific types of services and applications.

The ITU Radio Regulations contain detailed technical specifications for the use of each band of the radio frequency spectrum, including the types of services that are allowed, the technical parameters that must be followed, and the requirements for spectrum efficiency and interference protection. They also set out the rules for the coordination and notification of radio stations and the allocation of radio frequencies to countries and regions.

The ITU Radio Regulations are updated and revised periodically to reflect changes in technology and the evolving needs of the global telecommunications system. They are a critical component of the global telecommunication infrastructure and are essential for the smooth and efficient operation of radio communication systems around the world.

ii. KBLI and Relevant Licenses:

Businesses in the Telecommunications industry are varied. In the case that the Company is in the business of construction, maintenance and repair of telecommunication central building constructions and their equipment, the KBLI would be 42206. This field of business requires seven PB UMKU, including a Certification for Standards for Determining Capability of Construction Service

Business Entities, and Certificate of Approval of Facility Worthiness of Defense Industry (for land, sea, and air purposes).

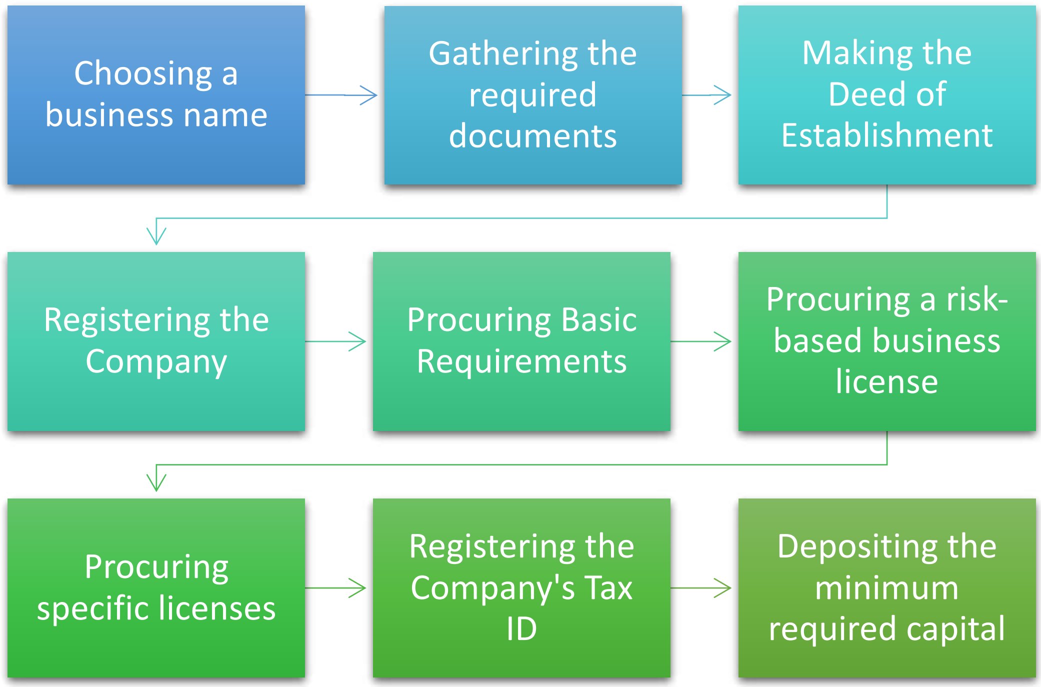
8. Prohibition of Nominee Arrangements

Investors are prohibited from making agreements or statements that claim that the share ownership in a limited liability company is for or on behalf of another party.[33] This arrangement, known as a Nominee Arrangement, is not recognized by Indonesian law. As a result, any Nominee Arrangements for the establishment of a PT PMA are automatically void. The purpose of this prohibition is to ensure the transparency and accountability of share ownership in limited liability companies in Indonesia. By prohibiting the use of Nominee Arrangements, the government is able to ensure that the true owners of a company are clearly identified and can be held accountable for their actions. This can help to prevent abuses of the legal system and can promote a fair and transparent business environment.

[33] Article 33(1), Investment Law

9. Establishing a PT PMA

According to the Investment Law, foreign investment activities must be carried out in the form of a PT PMA with its registered office located in Indonesia.[34] The steps to establish a PT PMA are as follows:



1) Choosing a Business Name

The naming of a limited liability company must use the Indonesian language, consisting of a minimum of three words, written in Latin letters, must not be the same or have similarities with other companies, and must not be contrary to public order and/or morality.[35]

2) Gathering the required documents

Before starting the process of establishing a limited liability company, it is necessary to prepare the administrative documents required for the establishment of the company, such as the identification documents of the

[34] Article 1 (3) and 5 (2), Investment Law
[35] Article 5, Government Regulation No. 43 of 2011 on Procedures for the Application and Use of a Limited Liability Company Name; Article 16, Company Law

company's founders with a minimum of two founders, the Tax Identification Number (“**NPWP**”) of the PT PMA's responsible person(s), and the domicile certificate of the location of the PT PMA. In this process of collecting documents, it is also necessary to determine the business field(s) that the PT PMA will partake in to determine the purpose and objectives of the PT PMA in the articles of incorporation.

3) <u>Making the Deed of Establishment</u>

A PT PMA must be established with a deed of establishment.[36] The deed of establishment must include information such as the company's name, business activities, registered address, authorized capital, number and types of shares, and the names and addresses of the company's commissioners and directors. A shareholder agreement can also be entered into at this point for greater clarity in each shareholders' responsibilities.

The creation of the articles of incorporation for PT PMA must be done in the form of a notarial deed in the Indonesian language.[37] The articles of incorporation must contain the basic provisions and at least the identification of the founders of the company, both individuals and legal entities, the identities of the first appointed members of the board of directors and the board of commissioners, the names of the shareholders who have taken part in the shares, the details of the number of shares, and the nominal value of the shares that have been placed and deposited.[38]

After the draft articles of incorporation for the PT PMA have been sent by the Notary, it is necessary to make corrections related to the consistency of the

[36] Article 7, Company Law
[37] Article 7(1), Company Law
[38] Article 8(1) and (2), Company Law

information in the draft. If the information in the draft is correct, the draft can be finalized for the signing of the articles of incorporation of the PT PMA by the founders of the company.

4) Registering the Company

After the articles of incorporation of the PT PMA are signed, the Notary will certify the legal entity of the PT PMA by submitting an application for legal entity certification to the Minister of Law and Human Rights. The deed of establishment must be registered with the Ministry of Law and Human Rights in order to establish a company.[39] In practice, this is usually done by a licensed notary. Upon successful registration, the company will be issued a number for its deed of establishment, and a Ministerial Decree validating its legal existence.

5) Procuring necessary basic requirements

In order to start operating as a business, a company is required to fulfill certain basic requirements and obtain a risk-based business license.[40] These basic requirements comprise:[41]

- A Certification of Spatial Conformity
- Environmental Approval
- Building Approval
- Certificate of Proper Building Functioning

The conditions for acquiring a risk-based business license will be further elaborated below.

6) Procuring a Risk-Based Business License

[39] Article 9, Company Law

[40] Article 7, Capital Investment Coordinating Board Regulation No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities

[41] Article 5, Government Regulation No.5 of 2021 on the Organization of Risk-Based Business Licensing

Risk-based business licensing is a regulatory approach that takes into account the potential risks posed by a business when determining what licenses and permits are required for the business to operate. In this approach, businesses that pose a higher risk to public health, safety, or the environment may be required to obtain more licenses and permits than businesses that pose a lower risk.

The determination of Risk-Based Business Licensing is done based on the information found in Attachments I, II, and III of GR 5/2021. This includes KBLI codes/references, KBLI titles, the scope of activities, risk parameters, risk levels, business licensing, time periods, validity periods, and business licensing authorities. The same regulation also includes Risk-Based Business Licensing requirements and/or obligations, as well as Risk-Based Business Licensing guidelines. Business activity standards and/or product standards will be further promulgated by the minister and/or head of agency for the respective sectors.

The specific steps to acquire this license is as follows:

i. Acquiring a Business Identification Number ("**NIB**"): The NIB serves as proof of registration for a business actor to carry out business activities, as well as an import identification number, access to customs and duties, registration for health and labor social security, and a mandatory labor report for the first period. Acquiring this is done through the Online Submission System ("**OSS**").[42] To obtain an NIB, the business operator needs to register by accessing the OSS website. After registering, the business operator can register by filling in data such as their name, ID number, address, type of investment, country of origin, business field, investment location, planned investment amount, plans for fiscal and/or other facilities, contact number, and tax ID number. After filling in complete data and having a tax ID number, the OSS agency will then issue a NIB.

[42] Article 176(3), Government Regulation No.5 of 2021 on the Organization of Risk-Based Business Licensing

ii. Business actors must then complete their company profile and capital structure, as well as a general plan of business activity. The OSS system will then issue the NIB based on the entered data, an examination of spatial conformity, and the specified business activity.

iii. The OSS system will then automatically notify relevant parties of the NIB issuance and the risk level for the business field will be determined according to norms, standards, procedures, and criteria set by relevant ministries and agencies, and verified by the OSS system.

iv. There are then further requirements that must be fulfilled before starting operation depending on the level of risk determined by the system (low, medium-low, medium-high, and high). These are explained in the table below:

	Required Documents to operate	Elaboration
Low Risk[43]	NIB	Business actors must submit a Commitment Letter for Implementation of Environmental Management and Monitoring ("**SPPL**") in order to carry out low risk business activities. The NIB, which will serve as the SPPL, will be required for the preparation, operational, and commercial stages.
Medium-Low Risk[44]	NIB and Standard Certificates	Business actors must submit a Standard Certificate in the form of self-declaration to meet business activity standards. If their business activity requires fulfilling Environment Management Efforts and Environment

[43] Article 12, *Ibid*
[44] Article 13, *Ibid*

		Monitoring Efforts ("**UKL-UPL**"), the actor must also fill out a UKL-UPL form and a Statement of Capability of Environment Management ("**PKPLH**") in the OSS system to obtain a NIB and Standard Certificate. If their business activity does not require UKL-UPL, the actor must fill out an SPPL form in the OSS system to obtain a NIB and Standard Certificate. The NIB and Standard Certificate must be used as the legal basis for conducting business activities. The government will carry out supervision to ensure that business actors meet the standards.
Medium-High Risk[45]	NIB and Standard Certificates	**In the Preparation Stage**: business actors must submit the Standard Certificate in the form of self-declaration to meet business activity standards. If the business activity is required to fulfill UKL-UPL, the business actor must fill out the UKL-UPL form along with the PKPLH in the OSS system to obtain NIB and an unverified Standard Certificate. If the business activity is not required to fulfill UKL-UPL, the business actor must fill out the SPPL form in the OSS system to obtain NIB and an unverified Standard Certificate. NIB and an unverified Standard Certificate are the legal basis for conducting business activity in the preparation stage. **In the Operational Stage:** the Ministry of Environment and Forestry must verify the UKL-UPL form and PKPLH. If approved, the OSS system will issue approval on PKPLH UKL-UPL. Business actors must then fulfill standard business activity through the OSS system within a specified time period in accordance with

[45] Article 14, *Ibid*

		relevant ministry/agency regulations. The verified Standard Certificate is the legal basis for conducting operational and/or commercial business activity. If necessary and/or required, business actors must also obtain a certificate of goods and/or services in addition to NIB and the Standard Certificate.
High Risk[46]	NIB and Licenses	To obtain a license, business actors must fulfill certain requirements through the OSS system within a specified time period in accordance with relevant ministry/agency regulations. If the business activity is required to fulfill Environmental Impact Assessment ("**AMDAL**"), business actors must obtain Environmental Approval in the form of an Environmental Feasibility Decree before submitting a license application. The decree is a requirement for the issuance of a license. If the business activity is required to fulfill UKL-UPL, the business actor must fill out the UKL-UPL form along with the PKPLH in the OSS system. The Ministry of Environment and Forestry must verify the UKL-UPL form and PKPLH. If approved, the OSS system will issue approval of PKPLH.

7) <u>Procuring specific licenses</u>

In addition to risk-based business licenses, a PT PMA which carries out certain business activities must also procure the respective license to operate in that business field, this is known as a PB UMKU (*Perizinan Berusaha Untuk Menunjang Kegiatan Usaha*).[47] For example, in the case that a PT PMA wants to run a business bulk selling automobiles with the KBLI code 45101, it must also have a PB UMKU in the form of a Certificate of Registration of a Distributor or Agent of Goods

[46] Article 15, *Ibid*

[47] Article 1 (4, 5, & 6), Capital Investment Coordinating Board Regulation Number 4 of 2021 concerning Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities

and/or Services ("**SBU**"). These specifics can be seen on the OSS page for each field of business. Further enquiries can be communicated to our corporate lawyers.

8) Registering a Tax ID

A Tax ID is a necessary document to procure for any company.[48] To obtain a Tax ID ("**NPWP"**) for a company in Indonesia, the company must register with the tax office. This can be done online, through the tax office's website, or in person at a tax office. In general, the company will need to provide the following information:[49]

- A copy of the PT PMA's deed of establishment;
- A copy of the Tax ID of the leadership of the Company, or a passport if the relevant person is a foreigner;

Once the company has registered for a Tax ID, it will be able to use it to pay its taxes and to access various tax-related services, such as applying for tax refunds or requesting tax exemption. The company will also be required to use its Tax ID when filing its tax returns. The process of obtaining a Tax ID for the company takes about 7 working days. In addition to the tax ID number, the company also needs to obtain a Taxable Entrepreneur Letter ("**PKP**") which is handled at the Tax Service Office depending on the company's domicile.

9) Opening a bank account and depositing the minimum required capital

The PT PMA must fulfill the requirements as mentioned above regarding the minimum required capital. The bank account must be opened with a local bank in Indonesia, and the minimum required capital must be deposited and verified by the bank before the company can be registered. To open a special foreign

[48] Article 2(1)(c), Law No.7 of 1983 on Income Tax, as amended at latest by Law No.7 of 2021
[49] Article 9 (4)(a), Regulation of the Directorate General of Taxes Number PER-04/PJ/2020 on Technical Instructions for Implementing Tax ID, Electronic Certificates, and Establishment of Taxable Entrepreneurs

investment bank account in Indonesia for a newly established PT PMA, the following documents are required:

- Business Identification Number, Business License, Article of Association, Deed of Establishment, and Tax ID.
- Deed of amendment (if any).
- Power of attorney specifically authorizing another person to open the bank account.
- Resident Identity Card or passport of all Board of Directors and Shareholders.
- Photo of the authorized person.
- A minimum deposit of IDR 10 million or USD 1,000.

When initiating the process of opening a corporate bank account, there is no standard timeframe for when the company's account will become active. The verification process pertaining to the company's bank account will depend on the compliance of the submitted documents. Nevertheless, most banks indicate that verification can typically be completed within one day, provided that all required documentation is submitted complete.

10. Transfer of Technology and Expertise through TKA

The transfer of technology and skills is a crucial requirement for foreign workers ("**TKA**") who work in companies in Indonesia, including foreign investment companies. Companies employing TKA are obligated to appoint Indonesian citizens as accompanying workers for the purposes of transfer of technology and skills from said TKA.[50] It is also expressly stipulated that every Foreign Worker employed by the employer in Indonesia has the obligation to transfer their skills to accompanying workers as Indonesian workers.[51] Therefore, every foreign investor who employs

[50] Article 7(1)(a), Government Regulation No. 34 of 2021 on the Use of Foreign Workers
[51] Article 1(3), Minister of Manpower Regulation No. 8 of 2021 on the Implementation of Government Regulation No. 34 of 2021 on the Use of Foreign Workers

foreign citizens in Indonesia is required to transfer technology and skills to Indonesian workers.

The transfer of technology and skills must be compiled based on the job competency standards for the positions held by TKA and is done through the transfer of abilities by utilizing and mastering the knowledge and technology required to perform a position. In addition, the transfer of technology and skills are done to accompanying workers with the goal of having the ability and authority and/or licenses to implement the technology used by TKA in carrying out work.[52]

Once the technology and skill transfer obligations have been carried out, the TKA employer also has the obligation to report on the implementation of technology and skill transfer from TKA to the TKA accompaniment at least once a year to the Minister of Manpower through the Director General of Placement and Employment Opportunities and Job Expansion. However, if the TKA employer does not make the report, the TKA employer may be subject to a temporary suspension of the process of obtaining approval for the TKA usage plan for a period of three months.[53] At the time of administrative sanctions, the TKA employer is still obliged to make the report. The TKA employer may be subject to a revocation of the approval of the TKA usage plan if it continues to fail to fulfil the reporting obligations.

11. Divestment Obligations for PT PMA

There is a provision that PT PMA whose capital is wholly owned by foreign citizens and/or legal entities, are given a maximum period of 15 years from the start of commercial production to sell part of their shares to Indonesian citizens and/or Indonesian legal entities through direct transfer or through the domestic capital

[52] Article 42(2), *Ibid*
[53] Article 54, *Ibid*

market.[54] This share divestment can be carried out to Indonesian citizens or Indonesian companies whose share capital is fully owned by Indonesian citizens through direct ownership in accordance with the agreement of the parties.[55] However, this does not mean that every PT PMA must divest its shares. The obligation to divest shares does not need to be carried out if the applicable regulations do not mandatorily require divestment (for instance in the case of mineral and coal mining companies), and the shareholders agree in a shareholder's agreement as follows:[56]

a. For foreign-owned business entities that are not 100% (one hundred percent) owned by foreigners, the Indonesian party states that it does not desire/demand share ownership in accordance with the provisions of share divestment contained in the letter of approval and/or business license; or
b. For foreign-owned business entities that are 100% (one hundred percent) owned by foreigners, the shareholders state that they do not have any commitments/agreements with any Indonesian party to divest their shares.

In other words, for companies in sectors that do not mandate divestment, as long as the shareholders establish early on that a PT PMA does not intend to divest their shares, there is no obligation to do so.

However, not all PT PMA business entities in Indonesia can be exempt from the obligation to divest shares. There are certain business fields in which it is mandatory to divest shares, namely the mineral and coal mining fields. Business entities holding a Mineral Business License ("**IUP**") and Special Mining Business License ("**IUPK**") at the production operation stage are required to divest at least 51% of shares gradually to the central government, regional government, state-owned enterprises, regional-

[54] Article 7(1), Government Regulation Number 20 of 1994 concerning Share Ownership in Companies Established in the Context of Foreign Investment
[55] Article 14(3), Capital Investment Coordinating Board (BKPM) Decree No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities
[56] Article 14(8), *Ibid*

owned enterprises and/or national private business entities after a certain amount of time.[57]

The details of the divestment share obligation for holders of IUP and IUPK in the production operation activity stage are as follows:

a. For companies carrying out mining activities by using open mining method and not integrated with Processing and/or Refining facilities or Mining and/or Utilization activities, share ownership of the Central Government, Regional Governments, BUMN, BUMD, and/or National Private Business Entities shall at least be in the following percentage:[58]
    1) In the tenth year is 5% (five percent);
    2) In the eleventh year is 10% (ten percent);
    3) In the twelfth year is 15% (fifteen percent);
    4) In the thirteenth year is 20% (twenty percent);
    5) In the fourteenth year is 30% (thirty percent); and
    6) In the fifteenth year is 51% (fifty-one percent)

    since starting production.

b. For companies carrying out mining activities by using open mining method and are integrated with Processing and/or Refining facilities or Mining and/or Utilization activities, share ownership of the Central Government, Regional Governments, BUMN, BUMD, and/or National Private Business Entities shall at least be in the following percentage:[59]
    1) In the fifteenth year is 5% (five percent);
    2) In the sixteenth year is 10% (ten percent);
    3) In the seventeenth year is 15% (fifteen percent);

[57] Article 147, Regulation of the Government of the Republic of Indonesia Number 96 of 2021 on the Implementation of Mineral and Coal-Mining Business Activities
[58] Article 147(2)(a), *Ibid*
[59] Article 147(2)(b), *Ibid*

4) In the eighteenth year is 20% (twenty percent);
5) In the nineteenth year is 30% (thirty percent); and
6) In the twentieth year is 51% (fifty-one percent),

since starting production.

c. For companies carrying out mining activities by using underground mining method and not integrated with Processing and/or Refining facilities or Mining and/or Utilization activities, share ownership of the Central Government, Regional Governments, BUMN, BUMD, and/or National Private Business Entities shall at least be in the following percentage:[60]

1) In the fifteenth year, at least 5% (five percent);
2) In the sixteenth year, at least 10% (ten percent);
3) In the seventeenth year, at least 15% (fifteen percent);
4) In the eighteenth year, at least 20% (twenty percent);
5) In the nineteenth year, at least 30% (thirty percent);
6) In the twentieth year, at least 51% (fifty-one percent),

since starting production.

d. For companies carrying out mining activities by using underground mining method and are integrated with Processing and/or Refining facilities or Mining and/or Utilization activities, share ownership of the Central Government, Regional Governments, BUMN, BUMD, and/or National Private Business Entities shall at least be in the following percentage:

1) In the twentieth year, at least 5% (five percent);
2) In the twenty-first year, at least 10% (ten percent);
3) In the twenty-second year, at least 15% (fifteen percent);
4) In the twenty-third year, at least 20% (twenty percent);
5) In the twenty-fourth year, at least 30% (thirty percent);

[60] Article 147(2)(c), *Ibid*

6) In the twenty-fifth year, at least 51% (fifty-one percent), since starting production.

12. Shareholder Agreements

A shareholder agreement is a contract between the shareholders of a company that sets out the rights, duties, and obligations of each shareholder with respect to the company, which can be made between the shareholders at the time the company is established. In order to ensure that a shareholder agreement is effective and comprehensive, it is best practice to include the following provisions:

- The names of the members of the company's board of directors (BoD) and board of commissioners (BoC), as well as their roles and responsibilities within the company.
- The amount of money that each shareholder has contributed to the company, as well as any other contributions they have made, such as providing expertise or other resources.
- The rights and responsibilities of each shareholder, including their rights to participate in decision-making and to receive a share of the company's profits and losses.
- Stipulations about the company's capital, including the maximum amount of capital that can be issued, the terms and conditions for issuing new shares, and the rules for calling and paying dividends to shareholders.
- The choice of law that will govern the shareholder agreement, as well as the jurisdiction in which any disputes arising from the agreement will be resolved.
- The terms and conditions under which shareholders can sell or transfer their shares to other parties, including any restrictions on transfer and the procedures for valuing and transferring shares.

Out of these provisions, the choice of law clause in a shareholder agreement specifies the laws that will govern the interpretation and enforcement of the agreement. A choice of law clause is a common feature of shareholder agreements and other commercial contracts, as it allows the parties to choose the legal framework that is most appropriate for their particular circumstances and needs. In general, Indonesian law recognizes the validity of choice of law clauses and will give effect to them unless they are contrary to public policy or the principles of Indonesian law. However, it is important to note that certain provisions of Indonesian law, such as those relating to the formation and registration of companies, are mandatory and cannot be waived or modified by agreement.

Indonesian law generally recognizes the validity of choice of law clauses. This is based on Article 1338 of the Indonesian Civil Code, which states that parties have freedom of contract so long as it is still in accordance with the applicable laws and regulations. Including these provisions in a shareholder agreement can help to ensure that the shareholders have a clear understanding of their rights and responsibilities with respect to the company and can help to prevent disputes and conflicts among the shareholders. As an additional note, when two companies collaborate in order to establish a third company together, the shareholder agreement in that instance may be named a joint venture agreement, but the clauses that are best practice to include remain the same.

13. Incentives for Investors

According to Article 21 Investment Law, the facilities or conveniences provided to the investors are as follows:

- land titles facilities;
- immigration service facilities; and
- import licensing facilities.

These facilities are specifically granted to investors involved in who are expanding their businesses or making new investments. However, to be eligible for these facilities, investments made by the investors must meet 1 (one) and/or more of the criteria outlined in Article 18 (3) of Investment Law. These criteria include, namely:

- absorbing considerable amount of labors;
- being categorized as a high priority scale;
- the relevant investment shall be included in infrastructure development;
- transferring technology;
- implementing pioneer industries;
- the relevant investments are located in remote areas, underdeveloped areas, border areas, or other areas deemed necessary;
- preserving the environment;
- implementing the research, development, and innovation activities;
- partnering with micro, small, medium enterprises or cooperatives;
- industries which utilize capital goods or manufactured machinery or equipment produced domestically; and/or
- being included in the development of tourism businesses.

III. LAND LAWS

The legal framework for land ownership in Indonesia is governed by the Basic Agrarian Law.[61] This law outlines the regulations and provisions related to agrarian affairs in the country. According to the Basic Agrarian Law, the most extensive right to land in Indonesia is the Hak Milik, or right of ownership.

Under the Basic Agrarian Law, only Indonesian citizens and certain other corporate bodies designated by the government are permitted to own land with the Hak Milik type.[62] These corporate bodies include state-established banks, associations of agricultural cooperation, religious bodies that have been appointed by the Head of the National Land Agency, and social organizations that have been appointed by the Head of the National Land Agency. These entities are granted the right to hold an indefeasible title to the land.

However, for non-Indonesian citizens, there is a different set of rules. According to Government Regulation No. 18/2021, non-Indonesian citizens may occupy a building or land via agreement with the owner of a Hak Milik type land right. Importantly, this right does not equate to ownership by non-Indonesian citizens, but only for occupation for a period of time as it is effectually a right of use.

The Basic Agrarian Law also recognizes several other types of rights over land; however, foreign companies may only be issued specific rights under specific conditions. These rights include *Hak Guna Usaha* ("**leasehold**"), *Hak Guna Bangunan* ("**building rights**"), and *Hak Pakai* ("**right of use**"). These permits are only issued to foreign investment companies known as PMA Companies, on the condition that they do not require an extensive area and that they use State-owned land rights. In relation to State-owned land rights, this means that if the State does not already own the right, the land owner will need to enter

[61] Law No.5 of 1960 on Basic Agrarian Principles
[62] Article 21, *Ibid*

an agreement with the PMA Company to relinquish the relevant right to the State before filing an application with the Land Office.

Each of these land right permits grants the user the ability to use the land, but the conditions, duration, and limitations vary. For example, the duration of the right will differ, the type of use permitted will also differ and whether the land user has the right to transfer or use their land use rights as security will depend on the right they were granted.

1. **Leasehold**

   The State can grant a leasehold, known as *Hak Guna Usaha*, for a maximum period of 95 years. It is initially granted for 35 years and can be renewed for two consecutive periods of 25 years and 35 years. This type of land permit can only be used for cultivation purposes, and it is allowed to be transferred or used as collateral.

2. **Right of Use**

   The State can grant the right of use, called *Hak Pakai*, for a period of 80 years. It is initially granted for 30 years and can be renewed for two consecutive periods of 20 years each. This type of land right allows the holder to use and/or collect produce from the land, however it also requires the holder to preserve the land, any buildings on it, and the environment. Although the holder of the right of use can use the land and collect produce from it, the land cannot be transferred unless it is directly controlled by the State and the State approves the transfer.

3. **Building Rights**

   The State can grant a Building Rights, also known as *Hak Guna Bangunan*, for a maximum period of 80 years. It is initially granted for 30 years, and can be renewed for two consecutive periods of 20 years and 30 years. After the expiration of the term of Building Rights and its extension, the holder may reapply for Building Rights on the same plot of land, as long as the city's zoning regulations still permit it. This land right allows the holder to construct and possess buildings on the land. Like other rights this can be transferred or used as collateral. A foreign investment company would mostly apply for this type of permit as it is the closest thing to land ownership available in Indonesia, such as for a factory or storage building. If the land is not Building Rights land, the landowner must first convert the existing land right such as *Hak Milik*, *Hak Guna Usaha* or *Hak Pakai* to a Building Rights title. This conversion usually requires a binding agreement with the landowner and approval from the Land Office before finalizing a sale and purchase agreement for the land.

In short, the legal framework for land ownership in Indonesia is governed by the Basic Agrarian Law, and under this law, only Indonesian citizens and certain other corporate bodies are allowed to own land. However, foreign investment companies are allowed to have certain rights over land such as leasehold, building rights, and right of use. The rules and regulations are specific, and those rights are issued under specific conditions such as using state-owned land rights and not requiring extensive areas.

IV. TECHNOLOGY-RELATED LAWS IN INDONESIA

Indonesia has seen significant growth in its technology sector in recent years. The technology law regime in Indonesia is a complex and evolving area, with a patchwork of laws and regulations governing various aspects of the rapidly developing sector. This section will provide an overview of the current state of technology law in Indonesia, including the laws and regulations that govern data privacy, e-commerce, and intellectual property, as well as some of the challenges that technology companies may face when operating in the country.

1. Overview of technology laws in Indonesia

Indonesia has a slew of laws governing the use of technology. There are laws governing everything from data privacy, telecommunications, to electronic crimes. These provisions are spread across a number of laws. The flagship law regarding technology in Indonesia is Law No. 11 of 2008 on Electronic Information and Transactions as latest amended by Law No. 1 of 2024 ("**ITE Law**"). It is divided into two main parts: regulations regarding electronic information and transactions, and regulations concerning prohibited acts. The law references international instruments such as the UNCITRAL Model Law on e-Commerce and the UNCITRAL Model Law on e-Signature in order to provide legal certainty for the needs of businesses and general society when conducting electronic transactions.

Some of the materials regulated under UU ITE include the recognition of electronic information and documents as valid legal evidence,[63] electronic signatures, the administration of electronic certification,[64] and the implementation of electronic system, including electronic transactions.[65]

[63] Articles 5 & 6, ITE Law
[64] Articles 13A, 13B & 14, *Ibid*
[65] Articles 15, 16A & 16B, *Ibid*

Additionally, UU ITE also contains provisions related to prohibited acts, such as the various types of cybercrime. UU ITE specifically regulates several types of cybercrime, including illegal content, illegal access, illegal interception, data interference, system disturbance, and misuse of devices. These provisions aim to prevent and punish cybercrime activities such as online gambling, defamation, threats and extortion, illegal access, and unauthorized use of electronic devices. UU ITE also provides for regulation on the responsibility and liability of parties involved in illegal activities. Overall, the UU ITE aims to create a legal framework to protect the rights and interests of all parties involved in electronic information and transactions, and to prevent and combat cybercrime.

2. **Data privacy**

Data privacy and protection is regulated under the newly enacted Law No.27 of 2022 on Personal Data Protection. The Personal Data Protection Law in Indonesia is based on a set of principles including protection, legal certainty, public interest, benefit, prudence, balance, accountability, and confidentiality. These principles guide the processing of personal data to ensure that individual's privacy rights are respected and protected by Data Controllers, which refers to any person, public entity, or international organization acting individually or jointly to determine the objectives and exercise control over the processing of personal data.

The principle of protection means that individuals' personal data is not misused. The principle of legal certainty means that data processing activities must be carried out on a legal basis. The principle of public interest means that the enforcement of personal data protection must consider the interest of the public, as well as the state administration and national defense and security. The principle of benefit means that the regulation of personal data protection must be useful for the national interest, specifically for public welfare. The principle of prudence means that parties involved in data processing and supervision activities must pay attention to all aspects that have the potential to cause losses. The principle of balance means parties must make an effort to balance the right of personal data protection and legitimate state rights based on public interest. The principle of accountability means that all parties involved in data processing and supervision activities must act responsibly to ensure the balance of rights and obligations of the parties concerned, including the personal data subjects. The principle of confidentiality means that personal data must be protected from unauthorized parties and/or from unauthorized personal data processing.

The processing of personal data must also comply with a set of principles that include: collection shall be carried out in a limited and specific, legal and valid, and transparent manner; processing must be done in accordance with its purpose; personal data processing must be done by ensuring the rights of the data subject; processing must be accurate, complete, not misleading, up-to-date, and accountable; processing must protect the security of personal data from unauthorized access, unauthorized disclosure, unauthorized alteration, misuse, destruction, and/or loss of personal data; data subject must be notified about the purpose of the processing, as well as any failure to protect the personal data; personal data should be destroyed and/or deleted after the expiry of the retention period or at the request of the data subject, unless otherwise stipulated by laws and regulations; and personal data processing must be carried out responsibly and be evidenced clearly.

3. Intellectual property rights for software, databases, and integrated circuits

In Indonesia, legal protection for the creators of computer software is provided under Law No. 28 of 2014 on Copyright. The law defines computer software as a set of instructions expressed in the form of language, code, schematics, or another form intended to make a computer work to perform a certain function or achieve a certain result. The creators of computer software are automatically granted copyright protection for 50 years starting from the date of its first announcement, without the need for registration.

The Copyright Law also provides protection for data and databases. Under the law, a copyrighted creation can be in the fields of science, art, and literature, including a database, which is defined as a compilation of data in any form that can be read by a computer, or a compilation in any other form. The protection provided for a database does not prejudice the rights of the authors of the individual creations that are included in the database.

This means that individuals or entities that creates, compiles, or curates a database can get copyright protection for their work as long as it is considered a creative work, meanwhile the data within the database is still protected under the rights of the creators of that individual data. Furthermore, the copyright holder of the database can prevent the unauthorized reproduction, distribution, and display of the copyrighted database but is still not able to control the individual data within the database.

Integrated circuits are also specifically protected as an intellectual property. Integrated circuits are protected by an intellectual property right known as *Desain Tata Letak Sirkuit Terpadu* ("**DTLST**"). DTLST can be registered if it is original, the design is the result of the designer's independent work, and at the time it was made it is not something common for designers.[66]

4. **E-commerce and digital businesses**

In Indonesia, the Government Regulation No. 80 of 2019 serves as the comprehensive regulatory framework for the e-commerce ecosystem. The regulation, which was enacted on November 25, 2019, provides a two-year

[66] Article 2, Law of the Republic of Indonesia Number 32 of 2000 Concerning Design of Integrated Circuits

transitional period for existing e-commerce businesses to come into compliance with the new rules.

Government Regulation 80/2019 defines any individual or entity, whether a legal entity or a non-legal entity, and whether local or foreign, that conducts e-commerce activities as a "Business Actor." This includes foreign individuals or business entities incorporated and domiciled outside of Indonesia that conduct e-commerce activities within Indonesia. The regulation also provides for three classifications of Business Actors:

- A Merchant is any Business Actor who conducts e-commerce activity for commercial purposes and not on a temporary basis, either through its own electronic systems or through an electronic system of an e-commerce operator.
- An E-commerce Operator ("**PPMSE**") is any Business Actor who provides a service and/or an electronic system to facilitate an e-commerce transaction. This can include merchants who also provide their own electronic systems when conducting e-commerce activity, as well as online marketplace platforms, online classified ads, price comparison platforms and daily deals.
- An Intermediary Service Operator is any Business Actor that provides intermediary or indirect services to support e-commerce activities, including search engine providers, hosting providers, and caching providers.

In essence, Government Regulation 80/2019 regulates any individual or entity, whether local or foreign that conducts e-commerce activities within the territory of Indonesia as Business Actors, which are divided into three classification, merchant, e-commerce operator, and intermediary service operator. Other than this, there is also a Minister of Trade Regulation that serves as its implementing regulation, which includes further specific obligations and requirements that must be fulfilled by Business Actors in the e-commerce sector.[67]

5. **Telecommunications**

The telecommunications industry in Indonesia is regulated by the Law No. 36 of 1999 on Telecommunications, which was amended by the Job Creation Law or Government Regulation In Lieu of Law No.2 of 2022 and its implementing regulations such as Government Regulation No. 52 of 2000, Government Regulation No. 46 of 2021, and several regulations issued by the Ministry of Communications and Information Technology ("**MCIT**").

These include MCIT Regulation No. 01/PER/M.KOMINFO/01/2010, which pertains to the implementation of telecommunications networks, MCIT Regulation No. 12 of 2018 which concerns special telecommunications for the needs of government agencies or legal entities, MCIT Regulation No. 13 of 2019 which deals with the implementation of telecommunications services and MCIT Regulation No. 5 of 2021 that is on the implementation of telecommunications. These regulations are collectively referred to as the Telecommunications Regulations and govern the various aspects of the telecommunications industry in the country.

6. **Electronic System Operators**

All private sector Electronic Systems Organizers ("**PSE**") are required to register through the OSS system.[68] The obligation also applies to all PSEs operating on internet portals, websites, and applications used for the following purposes:[69]

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[67] Minister of Trade Regulation No. 50 of 2020 on Provisions on Business Licensing, Advertising, Guidance and Supervision of Businesses in Trade through Electronic Systems

[68] Articles 2(1) & 3(1) & (2), Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 5 of 2020 on Electronic System Providers in the Private Sector as latest amended by Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 10 of 2021

[69] Article 2(2)(b), Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 5 of 2020 on Electronic System Providers in the Private Sector as latest amended by Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 10 of 2021

1) Provision, management, and/or operation of offerings and/or trading of goods and/or services;
2) Provision, management, and/or operation of financial transaction services;
3) Delivery of paid digital content through data networks;
4) Provision, management, and/or operation of communication services;
5) Search engine services and services related to the provision of electronic information; and/or
6) Processing of personal data for operational activities serving the public related to electronic transactions.

In applying as a private PSE, the following information is required:[70]

1) Overview of electronic system operation;
2) Obligation to ensure information security;
3) Obligation to protect personal data; and
4) Obligation to conduct system electronic feasibility testing.

[70] Article 3 (3), Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 5 of 2020 on Electronic System Providers in the Private Sector as latest amended by Regulation of the Minister of Communication and Informatics of the Republic of Indonesia Number 10 of 2021

V. GAMING INDUSTRY

1. Overview of the Gaming Industry Regulations in Indonesia

According to research published by the Economic Research Institute for ASEAN and East Asia in August 2023, Indonesia has experienced significant growth in the gaming industry, currently holding the 17th position in the global gaming market. The Government is determined to enhance this standing by introducing the Regulation of President No. 19 of 2024 on the Accelerated Development of the National Gaming Industry ("**Presidential Regulation on Local Game**") and the Minister of Communication and Information Technology Regulation No. 2 of 2024 concerning Gaming Classification ("**Ministerial Regulation on Game Classification**"). While Presidential Regulation on Local Game will focus on improving Indonesia's share of the gaming market by stressing a range of strategic development programs along with measurable targets, Ministerial Regulation on Game Classification provides legal certainty through a comprehensive standard in the gaming industry. This section will further analyze both legislation at the practical arrays.

The Presidential Regulation on Local Game functions as a guideline for both the central and regional governments in the development of the national gaming industry. The primary goal of this regulation is to improve Indonesia's share of the gaming market. To reach these objectives, the Presidential Regulation on Local Game outlines 11 key programs for the development of the gaming industry in Indonesia:

i. Development of Human Resources

The strategic plan to bolster Indonesia's gaming industry focuses on enhancing human resource capabilities and aligning educational pathways with industry needs. By targeting the participation of 3,000 individuals annually in game development training and prototype creation, the initiative seeks to build a skilled workforce equipped to handle the demands of modern game design. Additionally, the aim to involve 1,200 trained individuals in developing multiplayer-based flagship games highlights a commitment to producing high-quality, competitive products. The program also focuses on increasing expertise in business, marketing, and branding within the sector, with a goal of nurturing 100 new talents through scholarships and targeted training.

On a policy level, facilitating the entry of highly skilled foreign professionals is another critical component. By easing access to work permits, Indonesia hopes to attract international expertise, fostering knowledge transfer and collaboration. The formulation of Standard Classifications of Indonesian Occupations (KBJI) within the gaming industry further supports this by creating clear occupational standards that can be filled by both local and foreign workers. Adjusting curricula in vocational schools, training centers, and universities ensures that education aligns with industry requirements, preparing students for careers in game development. Together, these efforts aim to create a dynamic and sustainable gaming ecosystem that leverages both local talent and international expertise.

ii. Funding and Capital

The initiatives outlined aim to create a robust financial and regulatory framework to support the growth of Indonesia's gaming industry. A pilot funding program through Public Services Agencies (BLU) introduces a risk-mitigated rolling fund concept, allowing for structured financial support that is compliant with existing laws. This is complemented by the Indonesian Game Fund, which targets an annual investment of at least Rp. 600 billion to stimulate industry development. Moreover, a funding scheme designed for intellectual property-based businesses within the banking sector is being formulated, ensuring that gaming enterprises have access to the necessary capital. These efforts are aimed at attracting venture capital and investors, thereby driving innovation and expansion within the industry.

On the regulatory front, the introduction of an intellectual property valuation scheme underscores the importance of IP management, focusing on its utilization and licensing. Regulations are also being formulated to mandate inclusive payment systems on platforms like Apple Store, Google Play, and Steam, providing access to local electronic payment options. Additionally, policies are being developed to offer tax incentives, categorizing game development as a pioneering industry and integrating it into Special Economic Areas. This is bolstered by guidance for industry players on adhering to National Indonesian Standards and international ISO/IEC standards, ensuring global competitiveness. Together, these measures aim to foster a thriving and sustainable gaming ecosystem in Indonesia.

iii. Advancement of Promotions and Access to the National Gaming Market

To enhance the national gaming industry, a multi-faceted approach is proposed, focusing on captive market creation to ensure access to national gaming products via public entities. This initiative aims to replace imported intellectual property by promoting up to 25% adoption of domestic games in marketing across both public and private sectors. Additionally, fostering a robust intellectual property ecosystem is crucial, targeting a 25% increase in registered local games. Annual events will be hosted to promote 30 national games internationally and 100 domestically, while collaborations with e-commerce platforms will offer dedicated promotion slots for these national games. Furthermore, to support domestic production, there will be a mandate for national games to be pre-installed on devices sold in Indonesia.

iv. Provision of Adequate and Competitive Technological Infrastructure

To foster the growth of Indonesia's gaming industry, several key initiatives are proposed, including facilitating shared access to essential hardware and software for game developers and documenting the national gaming ecosystem with annual updates on industry actors and market dynamics. Additionally, there is a focus on gathering and prioritizing culturally significant game assets that reflect Indonesia's national heritage for stakeholders. The establishment of a collaborative research center dedicated to technology development and management in game production is also crucial. Lastly, developing robust digital infrastructure, particularly a 5G network, will be essential to support the flourishing gaming industry and enhance connectivity among developers and players.

v. Formulation of Laws and Regulations

The recent enactment of Ministerial Regulation, which amends Regulation No. 11 of 2016 on the *Indonesia Game Rating System*, aims to align gaming with Indonesia's national identity while enhancing classification oversight and funding based on local content. To protect the domestic market, local content requirements for gaming products are strengthened. Additionally, new business competition guidelines have been issued to promote healthy competition and prevent monopolistic practices within the industry. Efforts to facilitate shared technological access for game developers are underway, alongside industry mapping to document the national gaming ecosystem with annual updates. The focus will be on prioritizing game assets that reflect Indonesia's rich culture, establishing a collaborative tech development center for game production, and developing essential digital infrastructure, such as a 5G network, to support the growth of the industry.

vi. Development of the Hardware Industry

Presidential Regulation on Local Game aims to foster the national gaming industry's growth by emphasizing hardware development targets to be met by the end of 2024. Key initiatives include enhancing TKDN (*Tingkat Komponen Dalam Negeri*) laws to incorporate software aspects of games in the calculation formula, thereby promoting software preloading on hardware for market expansion. Furthermore, the regulation encourages collaboration between the manufacturing and national gaming industries to create business opportunities based on intellectual property. As a result, there is an expectation that TKDN requirements, which have previously been applied in sectors such as automotive and telecommunications, will soon be introduced in the national gaming industry.

vii. **Regional and Global Activation of National Games**

The program, set for implementation in 2023 and 2024 under the oversight of the Minister of Tourism and Creative Economy, aims to enhance engagement and recognition of national game producers by organizing events at various levels, including E-Sports tournaments. It also seeks to establish sustainable activation schemes to support the national gaming industry, featuring regular national game production competitions to honor exceptional domestically produced games. Additionally, the Ministry plans to promote Indonesian game industry participation in prominent international events such as Gamescom and the Tokyo Game Show.

viii. **Intellectual Property Protection**

The outlined initiatives aim to strengthen the intellectual property (IP) framework within Indonesia's gaming sector, starting with the creation of a valuation scheme and utilization program. This includes a focus on licensing processes, which is crucial for monetizing IP effectively. Additionally, by designing a bank funding strategy tailored for IP-based enterprises, the program seeks to provide financial support to developers, thereby encouraging innovation and growth. This financial backing is essential for transforming creative ideas into viable products and fostering a robust gaming industry that can compete internationally.

Furthermore, there is a strong emphasis on promoting domestic intellectual property over imported options in marketing campaigns, with the goal of having up to 25% of national games adopted by government bodies and private companies. This not only boosts local game developers but also strengthens national identity and cultural representation in media. The initiative to build an IP ecosystem by increasing the registration of gaming IPs with the Ministry of Law and Human Rights by 25% underscores the importance of protecting and leveraging creative content. Collaboration between the manufacturing and gaming industries is also encouraged to create new business opportunities, aligning two vital sectors and expanding the economic impact of the gaming industry across various markets such as comics, films, animation, and merchandise.

ix. Research and Development

The achievement of industry advancement relies on in-depth research within the field. Conducting research is instrumental in establishing a framework for long-term, sustainable growth in the sector. With this aim in mind, the Government plans to enhance their research and development as mentioned in Presidential Regulation on Local Game. The National Research and Innovation Agency, which serves as the only authorized non-ministerial research body that performs directly under the president, is responsible for creating a center for technology development and game development acceleration. The main target of establishing a catalyst for technology and game development acceleration is to ensure the facilitation of collaborative research and technology management.

Another effort is organized by introducing the creation of an asset store, which is a web platform designed to store national game assets for easier access. The Government has introduced the creation of an asset store, a web platform designed to store national game assets for easier access. This assets store will include two dimensions & three dimensions characters, environment, objects, and audio elements featuring Indonesian cultural themes, making them readily available for game developers to utilize in their applications. Another development focus is to improve connectivity by developing digital infrastructure that will benefit the gaming industry, such as 5G technology and the equitable distribution of internet access.

To ensure a smooth acceleration process, the Government will publish an annual report that provides an updated and comprehensive mapping of national game industry stakeholders and the local gaming market. Additionally, technology for game development will be made available for collaborative use by domestic game developers. Aiming to engage global actors, the Government will also implement policies offering tax incentives for game developers and publishers, thereby attracting investment and promoting the growth of national game publishing ventures.

x. Provisions of Incentive

The activation of the National Gaming industry at both regional and global levels is a key challenge faced by stakeholders in the national gaming sector. Sufficient activation and recognition are crucial in fostering the growth and development of the industry. Through the Presidential Regulation on Local Game, a few strategies were stipulated in order to boost the development of the realm, including the provision of incentives. The Government establishes a professional and sustainable regular activation scheme to support the growth of national games.

The Government will organize a nationwide and international game-creation competition in collaboration with industry professionals. This competition will serve as both an incentive and a recognition for the best locally developed games. The regulation states that such a concept will be overseen by the Ministry of Tourism and Creative Economy (which is now divided into two governing bodies) in partnership with the Tourism and Creative Economy Agency. This initiative aims to accelerate the growth of the national gaming industry by bringing together regional professionals and global experts, encouraging their contributions to foster greater interest in this rapidly expanding sector.

xi. Safeguarding Creative Works

The gaming industry shares values with creative industries, as both focus on turning ideas and intellectual property into high economic value. Therefore, gaming is recognized as a creative commodity with economic potential similar to established sectors like film and music. The Presidential Regulation on Local Games provides the legal recognition needed for games developed by various parties, which can be achieved by registering and protecting them as intellectual property assets. This initiative involves collaboration among stakeholders, including state-owned enterprises, private companies, and the Government. Additionally, effective implementation may require legal measures to facilitate the registration and protection of gaming intellectual property through the Ministry of Law and Human Rights.

In addition to the Presidential Regulation on Local Game, the Minister of Communication and Information Technology has promulgated the Ministerial Regulation on Game Classification, thereby repealing and replacing Regulation No. 11 of 2016 on the Indonesia Game Rating System. A new regulatory framework is poised to significantly influence game publishers in Indonesia by revising key provisions within the gaming industry that were previously not featured in Regulation No. 11 of 2016 on the Indonesia Game Rating System. These provisions encompass game classifications, the procedures for game classification, and the associated administrative sanctions. It is important to note that the Ministerial Regulation on Game Classification does not extend to game publishers who were previously governed by Regulation No. 11 of 2016 on the Indonesia Game Rating System.

The updated provisions regarding game classifications encompass classifications themselves, their procedures, and corresponding administrative sanctions. Below is a further analysis of the updated game classifications:

i. Games Classifications

As stipulated in the Ministerial Regulation on Game Classification, game classifications are categorized by the contents and the age group of the users. The updated regulation has five age groups consisting of:

a. Three years old or above
b. Seven years old or above
c. 13 years old or above
d. 15 years old or above
e. 18 years old or above

Furthermore, certain types of content are prohibited from being displayed in games. These prohibitions apply to certain age groups, which are:

<table>
<tr><th rowspan="2">Content Criteria</th><th colspan="5">Age Groups</th></tr>
<tr><th>Three Years Old</th><th>Seven Years Old</th><th>13 Years Old</th><th>15 Years Old</th><th>18 Years Old</th></tr>
<tr><td>Displaying of texts or pictures that relate to cigarettes, e-cigarettes, alcoholic beverages, narcotics, and/or other addictive substances</td><td colspan="4">prohibited</td><td>allowed</td></tr>
<tr><td>Displaying of violence</td><td colspan="2">prohibited</td><td colspan="3">allowed</td></tr>
<tr><td>Displaying of blood, mutilation, and/or cannibalism</td><td colspan="2">prohibited</td><td colspan="2">only depictions of blood are allowed</td><td>allowed</td></tr>
<tr><td>Use of harsh language, swearing, and/or adult humor</td><td colspan="3">prohibited</td><td colspan="2">allowed</td></tr>
<tr><td>Displaying of human-like figures showing vital organs, breasts, and/or buttocks</td><td colspan="4">prohibited</td><td>allowed</td></tr>
</table>

Materials that contain pornography	prohibited		allowed
Materials that contain simulation and/or gambling activities	prohibited		allowed
Materials that contain horror-related content	prohibited		allowed
Online interaction facilities	prohibited	allowed	allowed

Based on the above classifications, it is important to highlight that mild violence in the form of animation is permitted for the 13-year-old and 15-year-old age groups. Interactive online facilities that provide only chat options with features capable of screening for harsh language, swearing, and sexual terms are allowed for these same age groups. Additionally, content featuring adult humor without any sexual connotation is acceptable in the 15-year-old age group. However, games cannot be classified if they contain certain prohibited content, including displays or broadcasting of pornography, gambling, and material that violates laws and regulations. Moreover, the Ministerial Regulation on Game Classification no longer features the "sexual deviation" content category, as previously included under Regulation No. 11 of 2016 on the Indonesia Game Rating System, which stated that such content was prohibited from being displayed or implicitly implied.

ii. Procedures for the Classification of Games

Publishers are required to register as organizers of private electronic systems (Penyelenggara Sistem Elektronik – “**PSE**”) through the risk-based Online Single Submission (OSS) system and must complete the necessary game classification before displaying the relevant classification results, which summarize the conformity testing of the game’s description, packaging, and advertising. The assessment can be filed via either the official website managed by the Ministry of Communication and Information Technology or through electronic systems connected to this website. This game classification is mandatory for publishers when advertising and marketing games within Indonesian territory, necessitating the provision of various types of information, such as:

a. Name of Publisher
b. Name of the person in charge
c. Contact person
d. Address
e. Telephone Number
f. E-mail address
g. Name of game
h. Distribution platform
i. Type or genre
j. Date of release
k. Version
l. Short description
m. Game/content snippet
n. Link for download
o. Monetization of gaming products
p. Payment features
q. Physical sample or video snippet of anything advertising
r. Links to relevant social media
s. Communication features

Following the independent game classification, a conformity test will be conducted by a game classification examiner, resulting in a set of conformity test results that will be issued based on the findings of this examination.

Publishers may then engage in marketing activities after the Minister has issued the results of the game classification and after the Publishers have filled out the results of the relevant assessments. During any such marketing activities, Publishers are required to implement the following measures, at the least:

1. Include the result of the relevant game classification in accordance with the conformity test in any game descriptions, packaging, and/or advertising;
2. Adjust the design of the relevant game packaging to bring it into line with the results of the game classification;
3. Adjust the content of any advertising to bring it into line with the results of the game classification;
4. Display "parental assistance" advice on all packaging and advertising for games that are classified in the Three Years Old and Seven Years Old age groups; and
5. Display "parental guidance" advice on all packaging and advertising for games that are classified in the 13-year-old and 15-year-old age groups.

In cases where changes are made to any of the following elements: 1) Version; 2) Short description; 3) Snippet; 4) Link to game download; 5) Monetization of game products; 6) Payment features; 7) Advertisements; 8) Links to social media; 9) Physical media; 10) Communications features and/or 11) Changes/updates to content category, then the relevant Publisher must complete a reclassification process at least once in a given year.

iii. Administrative Sanctions

The Minister may impose certain types of sanctions for specific violations, as summarized in the table below:

Violation	Sanction
Publisher fails to register as a private PSE	In accordance with the relevant laws and regulations on PSE

Publisher fails to include the game classification with the game in accordance with the relevant conformity test	May take the following forms: 1) Written reprimand; 2) Temporary suspension; or 3) Termination of access.
Publisher fails to perform a game classification independently	Termination of access to the game
Publisher advertises or markets an unclassified game	
Publisher fails to undertake a reclassification when required to	

2. **Esports as a Competitive Game**

Esports, also known as Competitive Video Gaming, in Indonesia has been growing rapidly in recent years, and the Government has taken steps to ensure its continued growth and development by recognizing it as an equal to any physical sport. This can be seen from Article 21 of Law No. 11 of 2022 on Sports, which states that "The Central Government and Regional Governments shall foster and develop digital/electronic technology-based sports within the scope of Competitive Sports, Educational Sports, and Recreational Sports." This acknowledgment of esports as a legitimate form of sport means that it is subject to many of the same regulations as regular sports.

One of the key drivers for the growth of esports in Indonesia is its strong marketing potential for game publishers. Esports has grown to become a major industry, with millions of fans tuning in to watch professional players and teams compete. The popularity of esports has also led to the creation of many new jobs and opportunities in the field, making it a vital component of the digital economy.

To ensure that the industry continues to grow and develop in a sound manner, the Minister of Youth and Sports has recognized a National Governing Body for Esports in Indonesia, the Esports Federation of Indonesia (Pengurus Besar Esports Indonesia – "**PBESI**"). The PBESI was established in 2020 to oversee the regulation and development of esports in the country, with a set of rules encapsulated in PBESI Regulation No. 34/PB-ESI/B/VI/2021 on the Implementation of Esports Activity in Indonesia, detailing the implementation of esports regulations in Indonesia to ensure that the industry is properly regulated. The regulations set by the PBESI include but are not limited to: the status of professional players, the requirements for teams, and the requirements of esports event organizers. The PBESI ensures that professional players are properly registered, trained, and licensed. It also sets requirements for teams, such as their management and contractual relationship with players.

Additionally, the PBESI Regulation lays out the guidelines for esports event organizers, including rules for tournament formats and the use of fair play technology. The PBESI's regulations also provide a framework for the development of esports in Indonesia, including the establishment of training centers and the creation of a league system. PBESI Regulation also stipulates disciplinary matters regarding certain types of violations in the esports industry. These efforts are aimed at promoting the growth of esports in Indonesia and creating a sustainable industry for professional players and teams.

In 2025, the Indonesian Esports Association (PBESI) has strategically established a new division dedicated to law enforcement, reflecting its commitment to ensuring integrity and fair play in esports. This initiative will be supported by an expanded team under the leadership of the Secretary-General of PBESI, enhancing the organization's capacity to address emerging challenges in the field. Furthermore, the Chairman of PBESI has recently been appointed as the Coordinating Minister of Political and Security Affairs, a development that promises to significantly enhance the oversight and regulatory framework for esports. With these advancements, the supervision and governance of games officially recognized as esports will become more comprehensive and robust, fostering a secure and equitable competitive environment.

The recognition of esports as a sport by the Government of Indonesia and the establishment of regulations by the PBESI is a positive step towards the development of the esports industry in the country. This will not only benefit professional players and teams, but it will also provide opportunities for the growth of the gaming industry and the promotion of fair play in competitive gaming.

3. Government Support from the Creative Economy Perspective

The year 2024 was a crucial year in Indonesia's political climate, significantly influencing the dynamics of governance for 2025. In accordance with the provisions outlined in Law 39 of 2008 on State Ministries, the new presidency has enacted Regulation of President No. 140 of 2024 pertaining to the Organization of State Ministries. This regulation establishes a distinct separation between the Ministry of Tourism and the Ministry of Creative Economy. This section will examine the support extended by the relevant ministries to the gaming industry, which is categorized as a commodity within the framework of the creative economy sector.

While the responsibilities of the ministries have been divided, the communication platform on the Ministry of Tourism and Creative Economy's website remains integrated as of this research's publication. The Ministry is committed to fostering the growth of the national game industry. In an effort to implement Presidential Regulation on Local Game, the Indonesia Game Week 2025 will occur, featuring the Indonesia Games Festival, IGDX Career, Cyber Games Initiatives, and Gameprime, scheduled for August 8-17, 2025. As noted by Grand View Research, the global game industry is expected to grow, aiming for a market size of US$504.28 billion by 2030, marking a 69.7% increase from the 2024 game market. Consequently, the Minister of Tourism and Creative Economy stresses the significance of the implementation of the Presidential Regulation on Local Game to bolster the local game ecosystem. Through the Government's official website, the initiative aims for local games to capture 70% of the domestic market and enhance their usage within ministries, agencies, local governments, state-owned enterprises (SOEs), regionally-owned enterprises (ROEs), and educational institutions while also stimulating regional action plans for local game development.

Furthermore, the Government has selected eight local games for promotion during the HARGAI (Indonesian Game Day) Bangga Main Gim Lokal (Proud to Play Local Games) events. The selected games encompass Paw Rumble, Loka Pala, Warteg Gelora, Masuk Pak Eko, Clacker Master, Dread Haunt, Kejora, and Selera Nusantara. Through the promotion of these local games, the Government aspires to cultivate a sense of national pride while simultaneously encouraging creativity and innovation within the gaming sector. This initiative serves to enhance community engagement and foster cultural appreciation.

The implementation of the Presidential Regulation on Local Game holds significant importance, as evidenced by the 2022 data captured by the relevant Government; it indicates that the number of game players in Indonesia has reached a total of 174.1 million. Furthermore, according to the Ministry of Communication and Informatics, Indonesia maintains the highest percentage of game players in Southeast Asia, comprising 43% of the total. It is not surprising that Indonesia has emerged as the third-largest mobile game market based on downloads from Google Play. Additionally, referencing the data from the 2023/2024 Tourism and Creative Economy Outlook, it is noted that locally produced Indonesian games have recorded sales ranging from 30,000 to 150,000 copies, generating an average gross revenue between 400,000 USD and 3.2 million USD.

In the domain of esports, Indonesia's esports team distinguished itself as the overall champion at the 2023 Southeast Asian Games held in Cambodia. This accomplishment was obtained after the Indonesian esports team's remarkable achievement of securing five medals, which included three gold medals and two silver medals, during the 2023 SEA Games. Furthermore, the Indonesian esports team previously achieved the title of Overall Champion at the International Esports Federation (IESF) 14th World Championships (WEC) in 2022, which took place in Nusa Dua, Bali. On that occasion, the team successfully garnered four medals, comprising three gold medals and one bronze medal.

The gaming industry, which is recognized as part of the creative economic sector, received tremendous support from the Indonesian Government. Recognizing its significant potential for economic development and cultural enrichment, the government endeavors to empower local developers and secure an increased share of the global gaming market through initiatives such as the Presidential Regulation on Local Game and Indonesia Game Week. By enacting supportive regulations and promoting locally developed games, the Government aspires to nurture a thriving local gaming ecosystem. Furthermore, the nation's remarkable successes in esports highlight the considerable potential of the Indonesian gaming sector.

VI. TAX

In Indonesia, investors will encounter tax laws similar to those found in other jurisdictions. These include income tax, which includes Corporate Income Tax, Capital Gains Tax, Individual Income Tax, Withholding Tax on employee's remuneration, and Withholding Tax on various payments to third parties. Additionally, there is a Value Added Tax ("**VAT**") and Luxury Goods Sales Tax ("**LGST**") imposed on goods and services used for manufacturing, business, and consumption in Indonesia, subject to certain criteria.

Taxation in Indonesia is based on residency and a company is considered an Indonesian tax resident if it has been incorporated or is domiciled in Indonesia. If a foreign business engages in business activities in Indonesia through a permanent establishment, they will be subject to the same tax obligations as a resident taxpayer. The Indonesian tax system incorporates both self-assessment and withholding tax systems. Important tax legislation in Indonesia includes Government Regulation In Lieu of Law No.2 of 2022, Law No.7 of 2021 on Harmonization of Taxation Procedures, Law No 42 of 2009 on Goods and Services and Sales Tax on Luxury Goods, and Law No. 36 of 2008 on Income Tax. Foreign companies seeking to invest in Indonesia should seek the advice of an accredited Indonesian tax consultant.

VII. COMPANY BOARD AND EMPLOYMENT

1. Organs of a Company

In Indonesian company law, there are three main organs or bodies that make up a company: the General Meeting of Shareholders ("**GMS**"), the Board of Directors ("**BoD**"), and the Board of Commissioners ("**BoC**"). The GMS is the highest decision-making body of a company. It is made up of all the shareholders of the company and is responsible for making major decisions about the company's operations, such as electing the BoD and BoC members and approving the company's financial statements. The BoD is responsible for managing the day-to-day operations of the company and implementing the decisions made by the GMS. The BoC is responsible for providing oversight and supervision of the company's operations and ensuring that the BoD is acting in the best interests of the company and its shareholders. Together, these three organs work to ensure that the company is run effectively and in accordance with the laws and regulations of Indonesia.

a. General Meeting of Shareholders

A General Meeting of Shareholders is a meeting where shareholders of a company can exercise their voting rights to make decisions about the company. Indonesian Law recognizes two types of GMS: The Annual GMS, and the Extraordinary GMS.[71] The purpose of the Annual GMS, which must be convened no later than six months after the end of accounting year, is to review and approve the annual report submitted by the BoD that includes information about the company's business activities, financial performance, corporate social responsibilities, and any issues affecting the company's operations and performance.[72] The Annual GMS also includes information about the duties and responsibilities of the BoD and BoC members, as well as their names and salaries from the previous fiscal year.

[71] Article 78 (1), Company Law
[72] Article 66, *Ibid*

If necessary, an Extraordinary General Meeting of Shareholders ("**EGMS**") can also be held at any time for the benefit of the company. Indonesian law also allows for GMS and EGMS to be held electronically through video conference or teleconference.[73] In certain cases, a company may also be able to bypass the GMS by using a Unanimous Written Resolution of Shareholders, as long as all shareholders are informed in writing about the issues to be resolved and are in agreement with the resolution.[74]

In order to convene a GMS, one of the Company's organs, generally the BoD, will make a call for GMS. The call must be made no later than fifteen days prior to the date the GMS is held, excluding the date of the summons and the date of the GMS, and the call must include:[75]

- The Agenda for the GMS;
- Eligibility requirements for shareholders to attend the GMS;
- Requirements for eligible shareholders to propose agenda items for the GMS;
- Date of the GMS;
- Date of the GMS invitation;
- Registered Mail;
- Signature of the Organ calling for the GMS.

The Agenda of a GMS is of utmost importance, as a GMS concerning an unplanned agenda shall not be entitled to adopt any resolution, except if all shareholders are present and/or represented in the GMS and agree with the proposed additional agenda.[76] Furthermore, GMS concerning certain actions are subject to requirements under the Company Law, as follows:

[73] Article 77, *Ibid*
[74] Article 91, *Ibid*
[75] Article 79, *Ibid*
[76] Article 75 (3), *Ibid*

GMS Agenda	Quorum	Required Voting Amount
General Conditions[77]	More than ½ is required to be present or represented, except if AoA requires more	More than ½ of total votes, except if AoA requires more
Second GMS[78]	More than 1/3 is required to be present or represented, except if AoA requires more	More than ½ of total votes, except if AoA requires more
Third GMS[79]	Quorum determined by District Court	More than ½ of total votes, except if AoA requires more
GMS amending AoA[80]	At least 2/3 of total voting shares is required to be present or represented	2/3 of total votes cast, except if AoA requires more
Second GMS amending AoA[81]	At least 3/5 of total voting shares is required to be present or represented	2/3 of total votes cast, except if AoA requires more
Third GMS amending AoA[82]	Determined by District Court	2/3 of total votes cast
GMS regarding Merger, Consolidation, Acquisition,Separation, bankruptcy, extension of the company's duration, or the liquidation of the Company[83]	More than ¾ is required to be present or represented, except if AoA requires more	¾ of total votes cast
Second GMS regarding Merger, Consolidation, Acquisition,Separation, bankruptcy, extension of the company's duration, or the liquidation of the Company [84]	More than 2/3 is required to be present or represented, except if AoA requires more	¾ of total votes cast

[77] Article 86 (1), *Ibid*
[78] Article 86 (4), *Ibid*
[79] Article 86 (5), *Ibid*
[80] Article 88 (1), *Ibid*
[81] Article 88 (3), *Ibid*
[82] Article 88 (4), *Ibid*
[83] Article 89 (1), *Ibid*
[84] Article 89 (3), *Ibid*

Third GMS regarding Merger, Consolidation, Acquisition,Separation, bankruptcy, extension of the company's duration, or the liquidation of the Company [85]	Determined by District Court	¾ of total votes cast

b. Board of Directors/Commissioners

The BoD and the BoC are two important organs in Indonesian company law that are responsible for managing and overseeing the operations of a company. The BoD is responsible for managing the day-to-day operations of the company and implementing the decisions made by the General Meeting of Shareholders.

The BoD has the authority to hire and fire employees, enter into contracts and agreements on behalf of the company, and make other decisions related to the company's operations.[86] The BoC is responsible for providing oversight and supervision of the company's operations and ensuring that the BoD is acting in the best interests of the company and its shareholders.

The BoC oversees the actions of the BoD and provides advice for improvement.[87] The BoC does not have the same level of decision-making authority as the BoD, but it plays a key role in ensuring that the company is being run effectively and in compliance with laws and regulations. The BoC may suspend the BoD if it determines that the BoD is not performing its duties effectively or if the BoD is engaged in activities that could harm the company or its stakeholders.[88] The BoC may also suspend the BoD if it determines that the BoD is not complying with laws and regulations, or if the BoD is

[85] Article 89 (4), *Ibid*
[86] Article 92 (1), *Ibid*
[87] Article 108 (1), *Ibid*
[88] Article 106 (1), *Ibid*

not acting in the best interests of the company. In this matter, the BoC is accountable to the General Meeting of Shareholders and must report any decisions to suspend the BoD to the GMS for review and approval.[89]

In order to be qualified to be a member of the BoD or BoC, an individual must be capable of legal action, and in the last five years must not have:[90]

1. been declared bankrupt;
2. been the member of a BoD or BoC who have been determined to have caused the bankruptcy of a Company;
3. been sentenced for a criminal offense which caused financial loss to the state and/or relating to the financial sector.

Members of the BoD and BoC are exempt from the requirements of an RPTKA as elaborated below for employees.[91] They simply would need to apply for a personal visa in the form a VITAS. They are, however, still subject to regulations in the form of a limitation of the kind of position they are allowed to occupy.

2. Employment Law

A PT PMA will be subject to much of the same requirements as domestic companies. This means that they are also subject to the same provisions on employment law. In Indonesia, the framework of employment law is based on Law Number 13 of 2003 on Labor ("**Labor Law**") as latest amended by the Job Creation Law, and its implementing regulations.

[89] Article 106 (4), *Ibid*
[90] Articles 93 & 110, *Ibid*
[91] Article 30(a), Minister of Manpower Regulation No. 8 Year 2021 on Implementing Regulation for Government Regulation No. 34 Year 2021 on Foreign Worker Utilization

a. Employment Contracts

Parties involved in an employment contract have the freedom to negotiate and document the terms of their agreement, as long as certain basic information is included. This includes the name of the employee, the type of work they will be performing, and the number of wages they will be receiving. Additionally, the terms of the contract should not be less favorable than those prescribed by law. This includes compliance with minimum regional wages, as well as legal requirements for holiday and maternity leave entitlements. It is important to note that the parties should also ensure that the terms of the contract do not violate any other laws, regulations or policies in Indonesia.

b. Form of Contracts

There are two types of employment contracts, employment contracts with a definite term, and employment contracts with an indefinite term.[92] Definite term employment contracts are agreements based on a specific time frame or completion of a temporary job or work and cannot be used for permanent positions. These contracts have a maximum duration of five years and can be renewed.[93] The employees employed under definite-term contracts are not allowed to be employed on a trial or probationary basis, whereas those under indefinite-term contracts can be employed on a trial or probation for a maximum of three months.[94]

Employment agreements with a definite term must be written in the Indonesian language.[95] However, it is possible to include a second language, such as English, in the contract. In case of any inconsistencies

[92] Article 56, Labor Law
[93] Article 8, Regulation of the Government of the Republic of Indonesia Number 35 of 2021 on Temporary Employment Agreement, Outsourcing, Working Hours and Breaks and Termination of Employment Relationships
[94] Article 58, Labor Law
[95] Article 57, *Ibid*

between the two versions, the Indonesian version will take precedence. For contracts with an indefinite term, they can be agreed upon either verbally or in writing, whereas definite term contracts must be written. All written agreements must be signed by all parties involved, to make it legally binding.

c. Minimum Wages

The latest provision on minimum wage is the newly issued Minister of Manpower Regulation No. 16 of 2024, on The Determination of Minimum Wages for 2025. This regulation defines the minimum wage as the lowest monthly wage set by governors for workers in their respective provinces, which serves as a safety net. Essentially, the minimum wage is set at both the provincial and the regency/city level, determined by the relevant authority. Thus, the minimum wage will differ based on the domicile of the relevant company.

The 2025 minimum wage adjustment is calculated using a formula that includes the variables of economic growth, inflation, and certain indices. This increase in minimum wage is an effort by the government to improve the standard of living for workers in Indonesia and make sure they have a fair compensation for their work.

d. Working Hours

The maximum number of working hours per week for an employee is forty.[96] These hours have to be allocated either in seven hours per day over six days per week or eight hours per day over five days per week. However, there are certain business sectors and types of work which are regulated by Ministerial Decision and are exempt from these restrictions. In general,

[96] Article 77, *Ibid*

if an employer wants to employ workers to work longer hours, they can do so by obtaining the worker's agreement, providing overtime wages, and ensuring that the overtime worked by the employee does not exceed three hours per day or fourteen hours per week.

Employees are also entitled to breaks of at least thirty minutes per four continuous hours of work and must have adequate opportunity to worship as per their respective religions.

e. Termination of Employment

An employment contract in Indonesia can come to an end for a variety of reasons, including:[97]

- the company merging, consolidating, taking over, or separating and the employee not willing to continue the employment relationship;
- the company performing restructuring followed by closing the company or not followed by closing the company due to the company suffering a loss;
- the company being closed due to experiencing continuous losses for two years;
- the company closing due to force majeure;
- the company being in a state of postponement of debt payment obligations;
- a bankrupt company;
- an application for termination of employment relations filed by the employee on the grounds of the employer committing certain actions such as:
  - abuse, insult, or threat;
  - not paying wages on time for three consecutive months;

[97] Article 154A, *Ibid*

    - not performing obligations that have been promised to employees;
    - ordering employees to carry out work outside of the agreement; or
    - giving jobs that threaten the life, safety, health, and decency of employees;
- a decision by an industrial relations dispute settlement institution declaring the employer did not commit any of the acts referred to in the above point, and the employer deciding to terminate employment;
- the employee resigning on their own will and meeting certain requirements;
- the employee being absent for five consecutive working days without a complete written statement and being summoned two times;
- the employee committing violations of the agreement, or company rules and regulations;
- being unable to work for six months as a result of being detained by the authorities;
- being unable to work for twelve months as a result of being sick for a prolonged period or as a result of a work accident;
- entering retirement age; or
- passing away.

Termination of an indefinite term employment contract (outside of the probationary period) requires settlement via bipartite negotiations, conciliation, mediation, or proceedings before the Industrial Relations Courts. If a fixed-term employment contract terminates for reasons other than those listed above, the party that terminates the employment contract must pay compensation to the other party, which must be equal to the number of wages the employee is entitled to receive from the point of termination to the expiration of the contract. It is important to note that the above rules are in accordance with the regulations of the Ministry of Manpower and should be adhered to ensure compliance with the labor laws.

f. Outsourcing

Indonesia has laws that restrict companies from using subcontractors and labor suppliers for certain types of work. These outsourcing regulations are divided into two types: labor outsourcing and business process outsourcing. The activities that are restricted for labor outsourcing are cleaning, catering, security, oil and mining support, and transport. The objective of these regulations is to protect workers employed under outsourcing contract and labor suppliers are now required to have written employment contracts with their employees.

For business process outsourcing, the regulations do not list specific activities that may be outsourced. Instead, they allow business process outsourcing only if certain conditions are met. These conditions include that the work is separate from the company's core business activities, is categorized as a business supporting activity, and will not directly affect the production process if the delegated activity were to stop. Industry associations are expected to publish flowcharts categorizing typical core and non-core activities in the given sector, which will form the basis of a decision on whether an activity may be outsourced.

Companies are also required to register all outsourcing agreements, certain other accompanying documents and, in the case of business process outsourcing, a description of the type of work that will be subcontracted with the local Ministry of Manpower and Transmigration. Failure to comply with these regulations may lead to the company being deemed to be the employer of employees of the labor supplier or subcontractor company.

g. Provisions for Foreign Employees

There are also provisions specifically regarding the hiring of foreign employees, as follows:

i. Work Permit for Foreign Employees

PT PMA are able to hire foreign employees ("**TKA**") pursuant to the relevant regulations. In Indonesia, employers must obtain a work permit called Pengesahan RPTKA ("**RPTKA Legalization**") for foreign workers from the Ministry of Manpower.[98] There are some exceptions to this requirement, namely foreign workers who are board members or commissioners with certain share of stock ownership, diplomatic or consular staff, or those needed for certain short-term activities such as production emergencies, vocational activities, technology-based start-ups, business visits, or research.

If a foreign worker is not exempt from the work permit requirement, the employer must apply for the RPTKA Legalization at least two weeks before the expiration of the work period stated in the employment statement letter. For tech-based start-ups and vocational activities, foreign workers are exempt from the work permit requirement for a maximum of three months.[99] After this period, the employer must apply for the RPTKA Legalization for the foreign worker and submit the application at least two weeks before the end of the work period stated in the employment statement letter.

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[98] Article 2, Minister of Manpower Regulation No. 8 Year 2021 on Implementing Regulation for Government Regulation No. 34 Year 2021 on Foreign Worker Utilization,

[99] Article 33(2), *Ibid*

There are four types of RPTKA Legalizations with differing validity periods, elaborated in the table as follows:[100]

Type of RPTKA	Validity Period
Temporary work (production quality control, filming work, installation of machines, and so forth)	Less than 6 months, cannot be extended
Work for more than six months	Maximum period of two years and can be extended
Employment that does not require payment to the Foreign Worker Utilization Compensation Fund	Maximum period of two years and can be extended
Employment in Special Economic Zones	Maximum period of five years and can be extended.

The specific procedure by which a PT PMA can hire foreign workers is through the TKA online system organized by the Minister of Manpower. The application will be handled either by the Director of Foreign Manpower Utilization Management or the Director General of Manpower Placement Guidance and Expansion of Work Opportunity (Direktur Jenderal Pembinaan Penempatan Tenaga Kerja dan Perluasan Kesempatan Kerja) depending on the number of foreign workers the company intends to hire.

ii. Visas for Foreign Employees

In addition, the personal visas of foreign workers, also known as a Temporary Stay Permit(“**VITAS**”) must also be arranged. A VITAS is a type of visa that allows foreigners to engage in a variety of professional and expert activities in Indonesia, including working on ships, conducting quality control and audits, providing aftersales service, installing and repairing machinery, working on construction projects, and investing in

[100] Article 20, Minister of Manpower Regulation No. 8 of 2021 on Implementing Regulation for Government Regulation No. 34 Year 2021 regarding Foreign Worker Utilization

the country.[101] This type of visa also allows for family reunions and retirement travel. In order to apply for a VITAS, an applicant must also provide supplementary documents, including a statement of good standing from their embassy or consulate and a letter indicating that they are free from any contagious diseases that could pose a risk to public health.[102]

iii. Compensation Fund for the Utilization of TKA for Foreign Employees

Companies hiring foreign employees have on obligation to pay a Compensation Fund for the Utilization of TKA ("**DKPTKA**") in the amount of US$100 per position per person per month.[103] These DKPTKA payments are based on the period of time listed on the RPTKA Legalization and must be paid in advance.[104]

iv. Positions That May Not be Occupied by Foreigners

There are certain positions in a company which may not be occupied by a foreigner. The list of these can be seen in the Annex to Decree of the Minister of Manpower Number 349 of 2019, as below:[105]

1) Director of Human Resources;
2) Manager of Industrial Relations;
3) Manager of Human Resources;
4) Supervisor of Human Resources Development;
5) Supervisor of Human Resources Recruitment;
6) Supervisor of Human Resources Placement;
7) Supervisor of Employee Career Development;

[101] Article 102, Government Regulation No.32 of 2013 on the Implementing Regulation to Law Number 6 of 2011 on Immigration, as amended at latest by Government Regulation No.48 of 2021,
[102] Article 103, *Ibid*
[103] Article 35, Regulation of the Minister of Manpower of the Republic of Indonesia Number 8 of 2021 on Implementing Regulation of Regulation of the Government Number 34 of 2021 on the Utilization of Foreign Workers
[104] Article 36, *Ibid*
[105] Annex, Decree of the Minister of Manpower Number 349 of 2019 on Certain Positions Which are Prohibited to be Occupied by Foreign Workers

8) Human Resources Business Analyst;
9) Expert in Human Resources and Career Development;
10) Human Resources Specialist;
11) Career Advisor;
12) Labor Advisor;
13) Job Counselor and Mentor;
14) Labor Intermediary;
15) Employee Training Administrator;
16) Employee Interviewer;
17) Job Analyst; and
18) Occupational safety and health administrator for employees.

In addition, certain jobs such as the position of CEO for a company in the mining and excavation sector can be held by foreign workers but they must meet certain additional requirements, such as a bachelor's degree and a minimum of fifteen years of work experience.[106]

[106] Annex, *Ibid*

VIII. INTELLECTUAL PROPERTY

Indonesia is a signatory to the Trade Related Aspects of Intellectual Property Rights Agreement ("**TRIPS**") and has ratified the Paris Convention for Protection of Intellectual Property and the Convention Establishing the World Intellectual Property Organisation ("**WIPO Convention**"). Patents, trademarks, designs, and copyrights can be registered in Indonesia, but foreign businesses must employ the services of an Indonesian IP attorney or agent to do so. The government body responsible for administration, registration and enforcement is the Directorate General of Intellectual Property Rights ("**DGIP**") which maintains a searchable database. The cost of filing is low, but the process may take up to two years and enforcement of IP rights can be challenging, with infringement cases often resolved through cease-and-desist letters or notices in newspapers. The Commercial Court can provide compensation for damages and injunctions to stop infringing actions, but the lack of strong enforcement mechanisms can deter foreign investment.

1. Trademarks

Every business activity carried out by a business actor will produce a product/service. In the case of foreign investment in conducting business in Indonesia, foreign investors need to register their product or service marks in order to prevent them from being copied or imitated by others. The registration of trademarks in Indonesia follows the first to file principle, which means that the rights to the mark are obtained through registration, and exclusive rights to the mark are granted due to registration.[107] Therefore, registering a mark is necessary for every party conducting business in the Indonesian region, including foreign investment activities.

The registration of marks in Indonesia is jurisdictional. This means that even if foreign investors have previously registered their products/services in another country, the rights to the mark are not automatically registered or protected under Indonesian law.

[107] Article 21, Law No. 20 of 2016 on Marks and Geographical Indications

Foreign investors need to specifically register the mark in Indonesia for it to be legally protected.

The implementation of trademark registration in Indonesia can be done by submitting a registration application to the Minister of Law and Human Rights of the Republic of Indonesia electronically or non-electronically.[108] After the registration is accepted, the registered mark is protected by law for a period of ten years from the date of receipt. With the protection of the mark, others are not allowed to use the mark without written permission from the rights holder.

2. Copyrights

The Indonesian copyright system is set out in Law No.28 of 2014, which provides the framework for the protection and enforcement of copyright in the country. In addition to this, Indonesia has also ratified the Bern Convention for Protection of Literary and Artistic Works (under Presidential Degree No.18/1997) and the WIPO Copyrights Treaty (under Presidential Degree No. 19/1997). These international agreements further strengthen the protection of copyright in Indonesia.

To receive copyright protection in Indonesia, a work must be fixed, meaning it must have a material form, and must be in the field of science, arts, or literature. While the registration of copyright is available under the Copyright Law, it is not mandatory. However, due to the enforcement issues encountered in Indonesia with respect to IP rights in general, and particularly in the case of copyright, it is recommended to register for copyright.

The duration of copyright protection in Indonesia varies depending on the type of work. For example, books and other written works, speeches, visual aids for educational and scientific purposes, songs and music, performances such as drama and dance, fine arts,

[108] Article 4, Law No. 20 of 2016 on Marks and Geographical Indications

architectural work, maps, batik, and translations have a period of protection that lasts for as long as the creator lives plus seventy years (or, for a legal entity, fifty years from first publication).[109] On the other hand, databases, photography, typographical arrangements, computer programs, cinematography and works resulting from adaptations have a period of protection of fifty years from first publication for natural persons and legal entities.[110] Finally, applied arts are protected for twenty five years since first publication.

A civil action based on copyright infringement (e.g., unauthorized use or modification of a copyright work) is addressed to the Commercial Court. As in most jurisdictions, defenses to copyright infringement in Indonesia include demonstrating that the work published or reproduced is not copyrightable or is in the public domain.

Furthermore, royalties for copyright are regulated in Government Regulation No. 56 of 2021. Pursuant to this regulation, any individual or legal entity may commercially utilize songs and/or music as a part of commercial public services by paying royalties to the relevant creators, copyright holders and/or neighboring rights owners (collectively referred to as "**Rights Owners**") through the National Collective Management Agency (Lembaga Manajemen Kolektif Nasional – "**LMKN**").[111] To do so, Parties must first secure license agreements through the submission of applications to the copyright holders or neighboring rights owners via the LMKN.[112] After license agreements have been established, the Minister will record the license agreement, and the holders of licenses must submit reports on the use of songs and/or music to the LKMN via the Music Information System (*Sistem Informasi Lagu dan/atau Musik* – "**SILM**"). The LMKN is authorized under Regulation 56/2021 to accept royalties in relation to Rights Owners who either have or have not become members of any Collective Management Agencies

[109] Article 58, Law No.28 of 2014 on Copyright
[110] Article 59, *Ibid*
[111] Article 3, Government Regulation No. 56 of 2021 on the Management of Song and/or Music Copyright Royalties
[112] Article 9, *Ibid*

(Lembaga Manajemen Kolektif – "**LMK**"), and will accumulate the royalties and determine the amounts to be submitted to the relevant LMK based on prevalent practice and notions of justice.[113]

The Indonesian copyright system provides protection for a wide range of works and is in line with international standards. While registration is not mandatory, it is recommended due to the challenges of enforcement. Royalties are regulated by the National Collective Management Agency which ensures the fair distribution of royalties to copyright holders.

3. **Patents**

Indonesia's patent law, as outlined in Law Number 13 of 2016 on Patents ("**Patent Law**") as latest amended by Law No. 65 of 2024, provides for the protection of inventions for a period of 20 years from the filing date. However, once a patent has expired, it cannot be renewed.[114] This means that once the patent protection period has expired, an invention becomes a part of the public domain and can be freely produced and sold by other parties. The rules regarding the validity period of patents are put in place to prevent any single party from continuously controlling an entire industry, which could harm society and the trading system.

It is important to note that patents apply territorially, meaning that exclusive rights apply only in the country or region where the patent has been filed and granted, according to the laws of the country or region concerned. Indonesia is also a party to the Paris Convention for the Protection of Industrial Property, which applies the principle of 'national treatment'. This principle states that nationals from Union member countries have the same rights in the protection of IPR. In order to obtain the same rights, the

[113] Article 13, *Ibid*
[114] Article 22, Patent Law

applicant must meet the applicable requirements according to the laws of the local country.

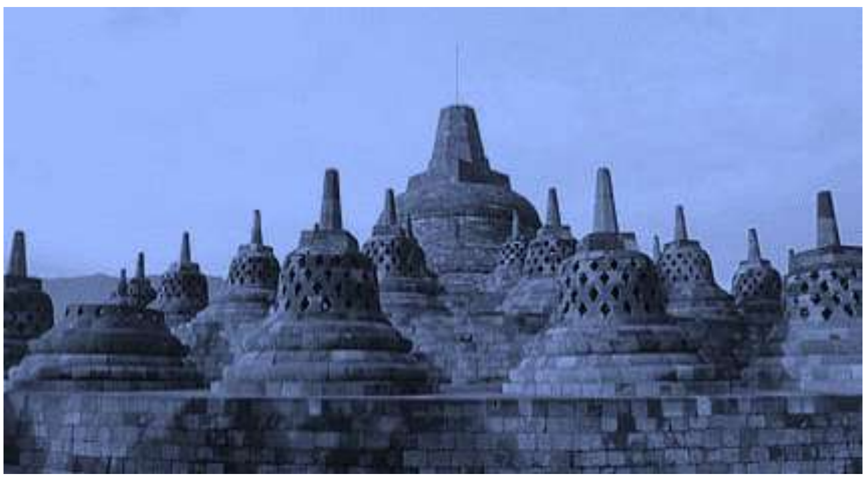
In addition to ordinary patents, there are also simple patents. The main difference between the two is that ordinary patents are granted for inventions that are new, contain an inventive step, and are industrially applicable.[115] On the other hand, simple patents are granted for any new invention, development of an existing product or process, and can be applied in industry.[116] Simple patents are granted for inventions in the form of products that not only differ in technical characteristics, but must have functions/uses that are more practical than previous inventions due to their shape, configuration, construction, or components, including tools, goods, machines, compositions, formulas, etc.

Under the Patent Law, patent holders have the exclusive right to use their patents and prohibit other parties who, without their consent, make, use, sell, import, rent, deliver, or make available for sale or lease or deliver the patented product. The term "patent holder" is defined in the law as the inventor as the owner of the patent or a party who receives the right from the patent owner or other party who further receives the right, who is registered in the general register of patents.

In summary, Indonesia's patent law provides for the protection of inventions for a period of twenty years from the filing date, but once the patent has expired, it cannot be renewed. The laws regarding the validity period of patents are put in place to prevent any single party from continuously controlling an entire industry, which could harm society and the trading system. In addition to ordinary patents, there are also simple patents, which are granted for any new invention, development of an existing product or process, and can be applied in industry. Patent holders have the exclusive right to use

[115] Article 3(1), Patent Law
[116] Article 3(2), *Ibid*

their patents and prohibit other parties from using, selling, or importing the patented product without their consent.



IX. ENVIRONMENTAL REGULATIONS

In Indonesia, environmental regulation is governed by Law No.32 of 2009 on Environmental Protection and Management as latest amended by the Job Creation Law and its supplementary regulations. The law requires that every business and/or activity that may give rise to significant environmental impacts must prepare an environmental impact analysis ("**AMDAL**") document.[117] This document is reviewed by an AMDAL appraisal commission, and based on the commission's recommendation, the Minister, Governors or Regents/Mayors decide on the environmental feasibility or infeasibility of the business and/or activity. This process is in place to ensure that any potential negative impacts on the environment are identified and minimized before the business or activity begins.

The AMDAL document is a comprehensive study that assesses the environmental impacts of a proposed project, including the potential effects on air and water quality, biodiversity, and the local community.[118] It also includes a plan for mitigating any negative impacts and a monitoring program to track the effectiveness of the mitigation measures. The commission that reviews the AMDAL document is made up of experts in various fields related to the environment, including ecology, hydrology, and social science.

In addition to the AMDAL requirements, every business and/or activity that is not required to prepare an AMDAL must have an environmental management and monitoring program ("**UKL-UPL**"). The UKL-UPL is a document that outlines the procedures and measures that a business or activity will take to minimize its impact on the environment. It includes a description of the activities that will be carried out, the potential environmental impacts, and the measures that will be taken to mitigate those impacts. The Governors or Regents/Mayors are responsible for stipulating the kinds of businesses and/or activities that must have a UKL-UPL.

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[117] Article 22, Law No.32 of 2009 on Environmental Protection and Management
[118] *Ibid*

Businesses and activities not required to have either an AMDAL or a UKL-UPL are still obliged to prepare a statement of readiness to manage and monitor the environment. This statement is a declaration that the business or activity is aware of its environmental responsibilities and is prepared to take action to minimize any negative impacts.

Every business or activity that is required to obtain an AMDAL or UKL-UPL is also required to hold an environmental license. The environmental license is issued by the Minister of Environment/Governor/Regent/Mayor after receiving or reviewing an AMDAL or UKL-UPL recommendation. The decision on the environmental feasibility of a business and/or activity is the basis of the issuance of an environmental license. This license is a pre-condition to the acquisition of activity or business licenses from different Ministries. The elucidation of this provision states that a business and/or activity license includes a license with another name, such as an operating permit and construction permit.

It is important to note that an environmental license is not a one-time process, and businesses and activities are required to renew their licenses regularly. They must also submit regular reports on their environmental management and monitoring activities to ensure compliance with the regulations. In the event that an environmental license is revoked, all licenses subsequently obtained as a result of the environmental license, such as any activity or business licenses, will also be revoked. This serves as a strong deterrent for businesses and activities to take their environmental responsibilities seriously and to ensure that they are in compliance with the regulations at all times.

X. SUPPORTING ENTITIES FOR PT PMA

Apart from establishing a PT PMA, foreign companies that already have overseas companies can establish their representative offices in Indonesia, either in the form of a Foreign Company Representative Office ("**KPPA**") or a Foreign Trade Company Representative Office ("**KP3A**"). These representative offices provide an opportunity for foreign companies to familiarize themselves with Indonesia's market prior to establishing a PT PMA. However, please note that the activities that can be carried out by a foreign company representative office in Indonesia are limited, and the representative office is prohibited from carrying out trade or sales activities in Indonesia. Explanation of the establishment of each type of supporting entity is as follows:

1. KPPA

As previously stated, foreign companies may set up a representative office before setting up a PT PMA and meeting the minimum capital requirement. One type of representative office that may be established is KPPA. A KPPA is an office managed by either an Indonesian citizen or a foreigner designated by a foreign company, or by a coalition of foreign companies based outside Indonesia, to serve as their representative in Indonesia. The person in charge of KPPA is referred to as the head of KPPA and must fulfill specific requirements, including:

- Residing in Indonesia;
- Take full responsibility for ensuring the continuity of the KPPA;
- They are not authorized to perform activities outside the activities of KPPA.
- They shall not hold concurrent positions as the head of a company and/or more than one Representative Office (KPPA).

If the appointed head of the KPPA is a foreign national and/or employs foreign workers, the KPPA must ensure the employment of Indonesian workers in compliance with current regulations. Furthermore, it is important to recognize that the activities permitted for the KPPA are restricted to the following matters: [119]

Furthermore, KPPA is recognized as a low-risk business activity. Accordingly, the KPPA must first acquire permits in the form of a NIB to conduct its operations in Indonesia. However, prior to the issuance of the NIB, the KPPA is also obligated to submit an SPPL. Both the NIB and SPPL can be obtained by submitting an application through the OSS system.

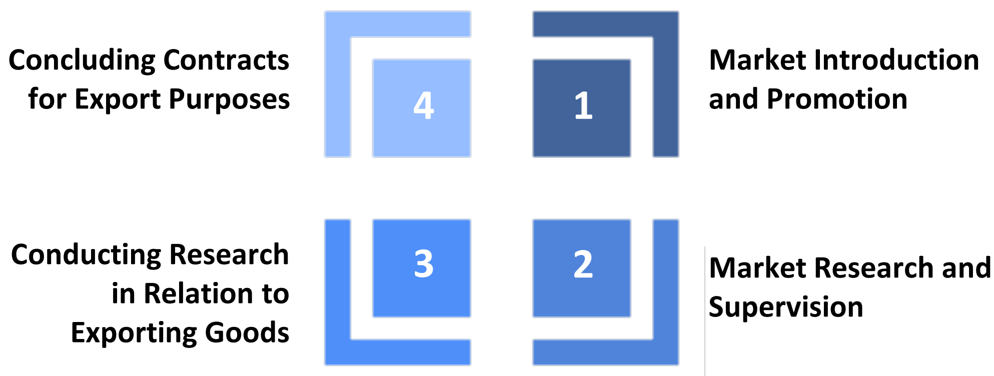
2. KP3A

Foreign companies seeking to expand into Indonesia have the option to establish a KP3A before establishing a PT PMA. A KP3A constitutes an office governed by Indonesian citizens or appointed foreign representatives designated by a foreign trading company, or a consortium of foreign enterprises, to act as its representative within Indonesia.

[119] Article 16 (3), Capital Investment Coordinating Board Regulation No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities

Pursuant to Ministry of Trade Regulation No. 10/2006, the various forms of KP3A in Indonesia can take the form of sales agents, factory agents, and/or purchasing agents.[120]

Furthermore, KP3A can be established in the capital cities of provinces and regencies or cities throughout all regions within the Republic of Indonesia. The activities that may be conducted by KP3A in Indonesia are as follows: [121]



1. The introduction, promotion, and advancement of the marketing of products manufactured by foreign companies or alliance of foreign companies abroad, which designate the appropriate KP3A, along with the provision of information or guidance on the usage and import of goods to the respective companies or users in the designated region Indonesia.
2. Conducting research on the market and supervision of domestic sales in order to promote the goods of a foreign company, or an alliance of foreign companies, in overseas markets, which are appointed to the relevant authorities KP3A.
3. Conducting research on the market for goods required by a foreign company or an alliance of foreign companies involves appointing the relevant KP3A and providing

[120] Article 2, *Ibid*
[121] Article 3, Regulation of the Minister of Trade Number 10/M-DAG/PER/3/2006 on Provisions and Procedures for Issuing Business Licenses for Representatives of Foreign Trade Companies

information and guidance concerning the requirements for exporting goods to the domestic companies.

4. Concluding the contract on behalf of the company, which appoints the relevant KP3A in collaboration with a domestic company to execute the tasks required export.

Nevertheless, there exist limitations that must be adhered to by KP3A when engaging in business activities. Similar to KPPA, KP3A is also prohibited from participating in trading activities and sales transactions during both the initial and settlement phases. This restriction encompasses actions such as (i) submitting tenders; (ii) executing contracts; and (iii) resolving claims.[122]

In the event that KP3A employs one (1) foreign worker, it is mandated to hire a minimum of three (3) experts and/or administrative personnel who are citizens of Indonesia. This requirement shall be substantiated by an employment agreement for Indonesian workers, alongside copies of their identification cards and valid work contracts or pay slips. Additionally, it is noteworthy that the head of KP3A is authorized to employ foreign workers for specific positions:[123]

1. the assistant of the head of KP3A; or
2. the assistant of the head of KP3A's branch office who is assigned to manage the following fields of duty:
   a. promotion;
   b. market survey; and
   c. supervision of sales and purchases.

The regulations governing licensing for KP3A are slightly different from the KPPA licensing regulations. Specifically, before implementing its activities in Indonesia, KP3A

[122] Article 4, Capital Investment Coordinating Board Regulation No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilities
[123] Pasal 11, Regulation of the Minister of Trade Number 10/M-DAG/PER/3/2006 on Provisions and Procedures for Issuing Business Licenses for Representatives of Foreign Trade Companies

is obligated to obtain NIB and SIUP3A (Trade Representative Office License for Foreign Trading Companies) licenses issued by the OSS Agency.

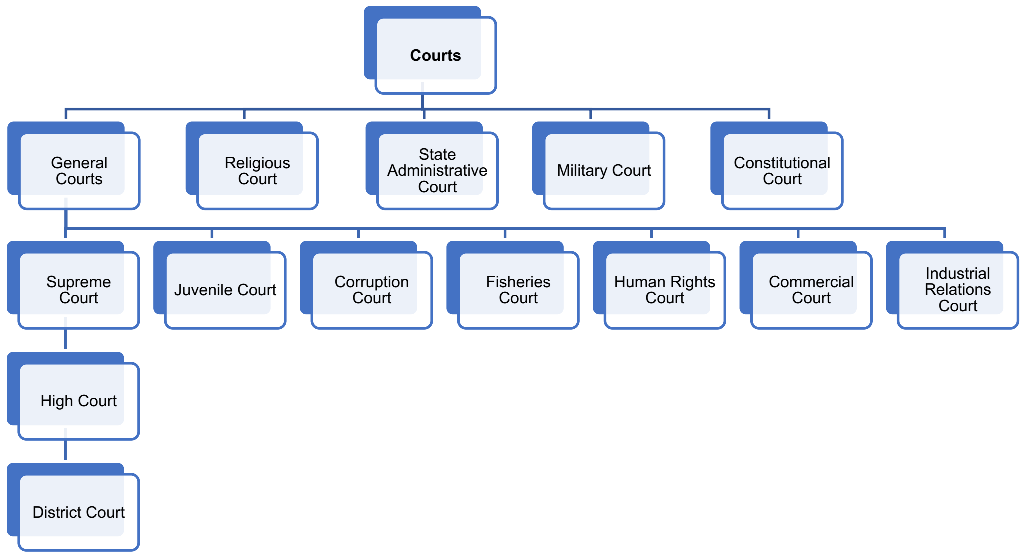
SIUP3A is categorized as a business license for a foreign trade company representative. It is valid for 3 (three) years after the date of issue, unless specified to be valid for a shorter period. The validity can be extended, provided that the request is made no later than 1 (one) month before the expiration date.

XI. DISPUTE SETTLEMENT IN INDONESIA

1. Litigation

a. Indonesian Courts

There are five types of courts in Indonesia with a hierarchy as illustrated in the image below:



General Courts: The general courts are the courts handling criminal and civil cases in general, namely the district court as the court of first instance and the high court as the court of appeal. In general courts, there are 6 special courts, namely:

- Juvenile Court, is a court that conducts judicial proceedings for children aged twelve-seventeen years who are suspected of committing a crime.
- Corruption Court, is a court that conducts judicial proceedings on cases of corruption.
- Fisheries Court, is a court that conducts judicial proceedings related to criminal acts in the field of fisheries.
- Human Rights Court, is a court that conducts judicial proceedings related to human rights violations.
- Commercial Court, is a court that conducts judicial proceedings on Bankruptcy and PKPU cases, Intellectual Property Rights, and Liquidation in the Deposit

Insurance Corporation and objections to KPPU decisions as determined in each Law.

- Industrial Relations Court, is a court that conducts judicial proceedings for industrial relations disputes.

Religious Court: Courts that specifically handle certain civil cases for Muslim citizens. The bodies that run within this scope are the religious court as the court of first instance and the high religious court. Specifically for the Province of Nanggroe Aceh Darussalam, a religious court was established under the name of the Syariah Court as the first instance religious court and the Aceh Syariah Court as the high religious court.

State Administrative Court: A special court that handles lawsuits against state administration officials as a result of written decisions made to the detriment of a person or legal entity. The courts within this scope consist of the State Administrative Court and the High State Administrative Court. In addition, it also handles tax disputes at the Tax Court.

Military Court: A court related to criminal cases and administrative disputes for the military. The framework consists of the Military Court, the High Military Court, and the Main Military Court.

Constitutional Court: A court that specifically deals with constitutional cases conducted by the Constitutional Court with five specific issues in its authority:

- Testing the Law against the 1945 Constitution
- Deciding disputes over the authority of state institutions
- Decide on the dissolution of political parties
- Deciding disputes about the results of the general election
- Making a decision on the opinion of the DPR regarding alleged violations by the President and/or Vice President according to the Constitution.

b. Foreign Courts

Indonesia currently does not have any international agreements in place for enforcing foreign court judgments, making them unenforceable within the country. This means that if a foreign court issues a judgment against an Indonesian company, it can only be enforced if the company has assets in the jurisdiction where the ruling was made. This lack of enforceability can pose a significant problem for foreign companies and investors who may have disputes with Indonesian companies and may discourage foreign investment in Indonesia.

2. Arbitration

Often, the more preferable method of dispute resolution for companies is arbitration. This is the case as compared to litigation, arbitration has a few inherent advantages, among others: a flexible procedure, transparent fees, confidentiality, efficiency of procedure. It is worth mentioning that Indonesia has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention**") in 1981, which means that as opposed to foreign judgments, foreign arbitral awards are enforceable in Indonesia. This provides a viable alternative for foreign companies and investors to resolve disputes with Indonesian companies and have the ruling enforced within the country.

There are two types of arbitration, commercial and investment, and their differences are as follows:

a. Commercial arbitration is a form of alternative dispute resolution (“**ADR**”) in which parties to a commercial contract agree to have their dispute resolved by an independent third party (the arbitrator) instead of going to court. Commercial arbitration is often used to resolve disputes related to contracts for the sale of goods or services, distribution agreements, joint ventures, and other business transactions. These types of arbitrations can be used to settle disputes between a PT PMA and another company, be it a domestic or foreign company. There are many forums around the world for commercial arbitration (ex: Singapore International Arbitration Centre/SIAC, Asian International Arbitration Centre/AIAC,etc) and the one chosen will depend on the arbitration or submission agreement between the disputing parties. In Indonesia, if an arbitration agreement exists, the District Court does not have jurisdiction over disputes within the scope of said arbitration agreement.[124]

b. Investment arbitration, also known as investor-state arbitration, is a form of ADR in which an investor (usually a company or an individual) brings a claim against a foreign state or government for alleged breaches of international investment agreements or other international law. Investment arbitration can be used to resolve disputes related to the expropriation of assets, discriminatory treatment, and other alleged violations of the rights of foreign investors. In Indonesia, investment arbitration is typically conducted under the rules of the International Centre for Settlement of Investment Disputes ("**ICSID**").[125]

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[124] Article 3, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution
[125] Article 1, Law No. 5 of 1968 on Settlement of Disputes Between Countries and Foreign Citizens Regarding Investment

XII. BANKRUPTCY

1. Bankruptcy Overview

Law Number 37 of 2004 on Bankruptcy and Postponement of Debt Payment ("**Bankruptcy Law**") governs bankruptcies in Indonesia. This law applies to both individuals and corporations. An individual or corporation is considered insolvent when they have two or more creditors and fail to pay at least one debt when it becomes due. In such cases, any one or more of the creditors, the public prosecutor, or the individual or enterprise itself, may file a bankruptcy petition with the court. However, in the case of a debtor that is a bank, a bankruptcy petition may only be filed by Bank Indonesia.

When a bankruptcy petition is filed, any creditor may also petition the court to appoint a liquidator to manage and liquidate the assets of the debtor under the supervision of a judge. The consequences of a declaration of bankruptcy include:

i. the recovery of the total wealth of the bankrupt debtor, together with any further wealth they acquire during bankruptcy;
ii. the bankrupt debtor forfeiting their right to control and manage their assets from the date an individual or enterprise is declared bankrupt; and
iii. the liquidation of the enterprise or individual's assets.

Secured creditors generally receive priority in payment from the proceeds of the sale of assets over which they have security during the liquidation of an enterprise. A creditor who has the right to retain goods owned by the debtor does not lose this right following a bankruptcy declaration.

Certain legal acts undertaken by the debtor before the declaration of bankruptcy may be annulled if it is proven that at the time of the legal act, the debtor and the other party with whom the debtor engaged in the legal act realized, or should have realized, that such an act would adversely affect creditors of the debtor. The Bankruptcy Law also deems the debtor and the other person to hold this realization for certain acts committed within one year before the bankruptcy. Any person who has received payment or property from a legal act that has been annulled must return it.

As mentioned earlier, the Indonesian bankruptcy law system follows the principle of debt collective, which involves the seizure of the debtor's property as a guarantee for the payment of debt through the bankruptcy institution. This principle emphasizes that the debtor's debt should be paid immediately from the property they own. Therefore, bankruptcy serves as a tool for enforcing the rights of creditors through the liquidation of the debtor's assets. However, the law in Indonesia does not acknowledge the principle of debt forgiveness, where a debtor is granted relief to pay off debts they are truly unable to fulfill.

2. Responsibility of Directors in a Bankruptcy

In Indonesia, there is no specific law that addresses the liability of directors in the event of a company's insolvency. However, each member of a company's board of directors is individually responsible for wrongful acts or negligence in carrying out their duties with good faith and full responsibility for the company's interests and business. This may be broad enough to encompass conduct related to insolvent trading. Additionally, if the bankruptcy of a company is caused by the fault or negligence of the board of directors and the company's assets are not sufficient to cover losses, all members of the board of directors are collectively responsible for the company's liabilities that are not covered by the bankruptcy assets. This liability applies to all members of the board of directors within a period of five years before the date of the company's bankruptcy.

XIII. TRADING

Foreign investors are generally allowed to import any goods, as long as they do not break laws related to merchandise trade and do not harm the safety, security, health, environment, or morals of the country. However, certain products may be restricted for trading. Indonesia, as a member of ASEAN, offers preferential rates for imports from other ASEAN members. To promote exports from Indonesia, the government provides incentives for investors operating in certain areas, such as the Batam Island Industrial Area. In these areas, taxes such as Value Added Tax and Sales Tax on Luxury Goods are not imposed on imports of goods used for export, as long as they are not used to produce taxable goods for export.

Before importing goods into Indonesia, a company must obtain either a General Import License ("**API-U**") or a Producer Import License ("**API-P**") as their NIB.[126] The API-U allows the holder to sell the imported product to third parties, while the API-P only allows the holder to use the imported product for their own production and prohibits the sale to third parties, including related parties. A company can only hold one of these licenses. Certain goods are also subject to import quotas. Importers must declare all imported goods to the Indonesian Directorate General of Customs and Excise and have a Customs Identification Number. Goods that are restricted from being imported include narcotics, explosives, arms and ammunitions, and items that may damage the ozone layer. [127]

Most imported products have import duties ranging from five to twenty percent, except for motor vehicles which have higher import duties. Preferential tariff rates are applied to imports from other ASEAN member countries. Under the ASEAN Free Trade Area, the goal is to remove tariffs and non-tariff barriers on cross-border transactions between ASEAN countries by 2015. Some goods are exempt from import duty, including goods for foreign representatives, officials

[126] Article 3(2), Regulation of the Minister of Trade Number 20 of 2021 concerning Import Policies as latest amended by the Regulation of the Minister of Trade Number 21 of 2024

[127] Article 3(2), Regulation of the Minister of Trade Number 18 of 2021 concerning Export Prohibited Goods and Import Prohibited Goods

of international organizations, and new foreign investors or expanding businesses for their capital goods, raw materials, and production components.

Companies wishing to export goods are required to have a certain NIB as well as certain business permits, which are the Registered Exporter License and Export Approval. [128] In the event that exporting activities are not carried out for business interests or for exporting goods listed in Appendix V of the Minister of Trade Regulation 19/2021, exporters are exempted from the NIB and/or business permit requirements. [129] All document submission needs, whether for import or export activities can be done through the Indonesia National Single Window System ("SINSW") through an integrated system called INATRADE. [130] Through this portal, everything from the business permits to documents for exemption from business permit requirements can be managed.

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[128] Article 3(2), Regulation of the Minister of Trade Number 19 of 2021 concerning Export Policies as latest amended by the Regulation of the Minister of Trade Number 21 of 2024

[129] Article 24(4), *Ibid*

[130] Article 4(1) Regulation of the Minister of Trade Number 19 of 2021 concerning Export Policies as latest amended by the Regulation of the Minister of Trade Number 21 of 2024

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