

Since independence in 1945, Indonesia has been attractive to foreign investors due to its location, demography and natural resources.

This article provides a general overview on doing business in Indonesia for foreign investors wishing to enter the Indonesian market.



A. OVERVIEW OF INDONESIA

Official name	Republic of Indonesia
Capital city	Jakarta
Other major cities	Surabaya, Medan, Bandung
Population	> 255 million (4th most populous in the world)
Nationality	Indonesian
Language	Bahasa Indonesia
Largest Ethnic group	Javanese (42%), Sundanese, ethnic Malays, Madurese
Dominant religion	Islam (87%)
Geography	South Eastern Asia, archipelago between Indian Ocean and Pacific Ocean. 15th largest
Government	Independent Republic since 1945
Legal System	Civil Law and customary (<i>adat</i>) law
Economy	2015 Nominal GDP estimate: \$3,511 per capita
Currency	Indonesian Rupiah (IDR)
Climate	Tropical

B. OPPORTUNITIES AND CHALLENGES OF DOING BUSINESS IN INDONESIA

Indonesia has the economic growth and investment potential to be regarded as one of the ‘BRIC’ countries (Brazil, Russia, India and China). This is due to its large domestic consumption base, substantial growth in the middle class and abundance of natural resources and strong demand for them from China, India and other rapidly expanding economies.

However, Indonesia’s business environment is still relatively unfriendly to foreign investors due to insufficient infrastructure and inefficient bureaucracy. It is not uncommon to find conflicting laws from different levels of government, different regions and even different authorities, making it unclear which regulations are applicable and when they apply.

Indonesia is ranked 107th out of 175 in the 2014 Transparency International’s corruption perception index. In the World Bank’s “Ease of doing business” and “Ease of starting a business” measurements, Indonesia ranked 114th and 155th out of 189 countries.

However, it is recognised that the Indonesian government has introduced a wide range of policies to assist in foreign investment.



C. LEGAL LANDSCAPE IN INDONESIA

For foreigners doing business in Indonesia, professional legal advice should always be obtained for contracts and agreements made in Indonesia.

One reason is that agreements under civil law, as opposed to the common law system, provide that certain clauses must apply to all agreements unless they are specifically excluded.

Litigation in Indonesia is often unpredictable and time-consuming, likely to take many months and even years to complete, thereby making it not the most effective route to resolve disputes.

Any commercial agreement should allow for provisions which operate in the event of disputes.

An effective dispute resolution clause should provide for Indonesian or international arbitration, for example in accordance with the rules and regulations of the Singapore International Arbitration Centre, where the final binding arbitral award is automatically ratified in the Indonesian Courts.

Additionally, agreements must also be drafted and executed in both the national language of the foreign party (or English) and Bahasa Indonesia. To avoid any disputes, typically, parties can agree that the foreign language version will prevail to the extent of any inconsistency between the two versions.

D. SETTING UP THE BUSINESS

One of the biggest challenge in setting up a business in Indonesia is the length of time and different agencies that a foreign investor has to deal with to obtain the necessary business permits and licenses.

However, since 2015, the time for company registration (along with obtaining the Principal Licence / *Izin Prinsip*) has become shorter and now takes about 6 - 8 weeks for completion. Additional licenses for specific industries may take additional time.

Foreign investment must be approved by the Indonesian Government through the Indonesia Investment Coordination Board (*Badan Koordinasi Penanaman Modal - BKPM*). All foreign owned companies in Indonesia are classified as a PT PMA (*Perseroan Teratas Penanaman Modal Asing*), which stands for limited liability company (PT) with foreign direct investment (PMA).

The Principal Licence of investment is the initial government approval that must be obtained before conducting investment in Indonesia and establishing a PMA company.

Subsequently, the process of incorporation of a PMA PT involves putting together a Deed of Establishment containing the articles of association of the company signed before a notary public in Indonesia and submitting this Deed of Establishment to the Ministry of Laws and Human Rights, for approval along with showing proof of payment of 100% of the issued capital.

Afterwards, the Deed of Establishment is registered with the Ministry of Trade and published in the state gazette.

D.1. FOREIGN OWNERSHIP LIMITATIONS

Maximum foreign ownership is imposed and varies from 0% to 100% depending on the business classification. This is provided in the Negative Investment List contained in Presidential Regulation No. 39 of 2014, outlining the list of business fields either completely closed to investment or conditionally open to investment (subject to foreign ownership limits or special arrangements and permits such as location restrictions). This list can be accessed from the BKPM at: <http://www4.bkpm.go.id/contents/general/117139/negative-investment-list#.VJN6-ULbpw>.

Obtaining professional legal advice on how the business field of a particular proposed investment is categorised is strongly recommended.

D.2. MINIMUM CAPITAL AND INVESTMENT PLAN

To establish a PT PMA, the BKPM requires the foreign-owned company to present an investment plan of a minimum investment of IDR 10 billion (around \$1 million AUD), excluding the cost of the land and buildings. Additionally, a minimum of 25% or IDR 2.5 billion (around \$250,000.00 AUD) of the investment plan needs to be paid up as capital.

Once the PT PMA is registered, the company will also need to start reporting the investment activities every 3 or 6 months depending on the licence.

D.3. CORPORATION STRUCTURE

Every PT needs at least two shareholders. They can be both individual or corporate shareholders. Each shareholder must hold shares with a nominal value of at least IDR 10 million (around \$1,000.00 AUD).

The PMA PT must consist of at least one commissioner and one director. The commissioner is the supervisor of the director(s) and can be a foreigner. However at least one of the directors needs to hold an Indonesian tax card and this can only be obtained by locals or Indonesian residents.

E. PERMANENT BUSINESS LICENCE

Once the incorporation process has been completed, it enables the company to start running the business.

The Principal Licence is valid for a maximum of 3 years depending on the business classification. During this time, but preferably as soon as eligible, the Permanent Business Licence (*Izin Usaha Tetap*) should be acquired.

The Permanent Business Licence means the business is fully operating in Indonesia and enables the company to hire foreign experts and workers, obtain additional licenses such as for import and construction, as well as add shareholders or sell the company.

There are conditions to obtaining the Permanent Business Licence, for example, evidence of proof of investment and submission of investment activity reports every 3 months.



F. TAX ISSUES

Most Indonesian taxes are similar to those that investors would expect to find in other jurisdictions, these include income tax (including Corporate Income Tax, Capital Gains Tax, Individual Income Tax, Withholding Tax on employee’s remuneration and Withholding Tax on various payments to third parties) and Value Added Tax and Luxury Goods Sales Tax levied on goods and services used for manufacturing, business and consumption in Indonesia.

Tax determination is based on residency. A company incorporated or domiciled in Indonesia is treated as an Indonesian tax resident for tax purposes. The official tax year runs from 1 January to 31 December.

Corporate tax rate is at 25%. Listed companies which meet certain conditions are eligible for a 5% reduction. A company with gross turnover less than IDR 50 billion (around \$5 million AUD) is eligible for a 50% reduction on the proportion of taxable income which results when IDR 4.8 billion is divided by the gross annual turnover.

Personal tax rates are:

Rate (%)	Taxable income (IDR)
5	< 50 million
15	50 million–250 million
25	250 million–500 million
30	> 500 million

Tax advice from accredited tax consultants at Indonesian accounting firms is strongly recommended.

G. EMPLOYMENT ISSUES

Law No. 13 of 2003 on Manpower, together with its regulations, is the legal framework for employment that applies both to local Indonesians and foreign workers in Indonesia. If there is a dispute between an employment contract and the legislation, the legislation will apply.

Indonesia has one of Asia’s most stringent labour regulations. One of the most often cited difficulties is the high severance and

termination benefits payments, potentially running as high as 30 months of wages. This has partly contributed to a high share of informal workers and reduction in workers’ training

Additionally, hiring skilled workers is difficult as less than 10% of Indonesians reach tertiary level. Nevertheless, Indonesia still has one of the lowest average wage rates not only in Asia but in the world.

Working hours	40 hours allocated as 7 hours per day over 6 days per week or 8 hours per day over 5 days per week
Breaks	30 minutes for 4 continuous hours of work and adequate opportunity to worship as required by their respective religions
Wages	There is no national minimum wage but each province and sector has a set minimum wage
Leave	12 working days of paid vacation per year after one year of continuous work along with paid sick leave, marriage leave and compassionate leave
Internal labour rules	Companies of more than 10 employees must create a set of internal rules approved by the Minister. Enterprises that already have collective work agreements are not required to create internal rules.
Bipartite cooperation institute	Companies of more than 50 employees must establish a bipartite cooperation institute which functions as a forum for communication, consultation and resolution on employment issues at an enterprise
Trade unions	Employees have the right to form and become members of a trade union.

Comasters is able to assist a client in setting up a business in Indonesia complying with local laws.

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