Indonesia

Contributed by: Lubis Santosa & Maulana Law Offices
N&A Contact: Kazuyoshi Furusumi (profile)
Noriaki Machida (profile)

1. INTRODUCTION

1.1 Please give a brief outline of the legal system in Indonesia. Is it based on common law, civil law, or some other system?

It is based on civil law.

1.2 How are the courts organized in Indonesia?

The courts in Indonesia comprise general courts, administrative courts, religious courts, military courts, and a Constitutional Court. General courts have jurisdiction concerning criminal cases, and almost all civil cases. The general courts are divided into District Courts (*Pengadilan Negeri*), High Courts (*Pengadilan Tinggi*), and a Supreme Court.

The other Indonesian courts are as follows: commercial courts (*Pengadilan Niaga*), Tax Court (*Pengadilan Pajak*), children's courts (*Pengadilan Anak*), industrial relations courts (*Pengadilan Hubungan Industrial*), courts of fishery affairs (*Pengadilan Perikanan*), Criminal Corruption Court (*Pengadilan Tindak Pidana Korupsi*), Human Rights Court (*Pengadilan Hak Asasi Manusia*), and Islamic *sharia* courts (*Mahkamah Syariah*).

1.3 How are lawyers organized in Indonesia?

Pursuant to Law No. 18 of 2003 concerning Advocates ("**Law No. 18/2003**"), the legal term for lawyer is "advocate." Based on Article 1(1) of Law No. 18/2003, the advocate shall mean a professional person providing legal services, either inside or outside a court of law, and who has complied with the requirements as set forth in this law.

Those who can be appointed as advocates are any persons with a *Sarjana* degree in legal education and who have participated in vocational training for advocates conducted by the Organization of

Advocates.[1]

To be appointed an advocate, a person must fulfill the following requirements:[2]

1. Indonesian citizen;
2. Resides in Indonesia;
3. No status as a civil servant or government official;
4. Is at least 25 years old;
5. Possesses a *Sarjana* Degree in legal education as set forth in Article 2, paragraph 1;
6. Has passed the exam held by the Organization of Advocates;
7. Has worked voluntarily for at least two years consecutively in an advocates office;
8. Has not been punished for any criminal acts and not threatened with imprisonment of five years or more; and
9. Has good conduct, and is honest and reliable.

Organization of Advocates

The Organization of Advocates is a professional organization established pursuant to Law No. 18/2003.[3] The Organization of Advocates is the only organization for advocates, which is free, independent, and established according to the provisions of Law No. 18/2003. Its objective and purpose is to improve advocates' professional capabilities.[4] The Organization of Advocates shall determine and implement the professional code of ethics for its members.

1.4 What types of legal fee arrangements are common in Indonesia?

Lawyers use several common types of fee arrangements:

-Fixed Fees: the lawyer will sometimes offer to charge a fixed fee.

-Hourly Rate: the lawyer will charge you for each hour (or portion of an hour) that the lawyer works on your case. This is the most typical fee arrangement.

-Conditional Fee Agreements ("CFA" or "no win no fee"): the lawyer will sometimes agree to work

1 Article 2, paragraph 1 of Law No. 18/2003.

2 Article 3, paragraph 1 of Law No. 18/2003.

3 Article 1(4) of Law No. 18/2003.

4 Article 28, paragraph 1 of Law No. 18/2003.

on your case on a "no win no fee" basis. If this is the case, you will need to enter into a so-called Conditional Fee Agreement (CFA) with the lawyer. On condition that the case is won, the losing side will reimburse the lawyer's costs. On the other hand, if you do not win your case, you do not have to pay your lawyer's fees. To avoid having to pay the other side's costs if you do lose the case, you will usually be advised to take out ("after the event") insurance to cover the other side's legal costs.

-Payment on Account of Costs (sometimes called a "retainer fee"): In this case, the lawyer is paid a set fee upfront, usually based on the lawyer's estimate of the initial work cost (based on the hourly rate and work to be undertaken). The retainer is placed in your client account, and the cost of your lawyer's legal advice is then deducted from that account as and when it accrues.

2. STRUCTURES FOR DOING BUSINESS

2.1 Is it necessary to set up a business organization in Indonesia to provide services or sell goods in Indonesia?

Foreign investors must set up a Limited Liability Company (*PT PMA*) in Indonesia to provide services or sell goods within Indonesia.

However, the foreign companies can establish foreign representative offices that generally conduct market research and correspondence regarding foreign companies' business (see also 2.2 below).

2.2 What forms of business organizations can be set up in Indonesia?

Foreign investment is required to be set up by way of a Limited Liability Company in Indonesia according to Article 5, paragraph 2 of Law No. 25 of 2007 regarding the investment ("**Investment Law**").

The foreign companies can also establish foreign representative offices. The following are three of the most common types of representative office allowed to be set up in Indonesia:

1. Foreign Representative Office (*Kantor Perwakilan Perusahaan Asing*)

According to Article 1 of Presidential Decree No. 90 of 2000 regarding the foreign representative office in conjunction with Article 1 of the Regulation of the Chairman of the Indonesian Investment Coordinating Board No. 12 of 2009 concerning the Procedure Application of Investment Licenses ("**Perka BKPM No. 12/2009**"), a foreign company or a group of foreign companies may open a foreign representative office in Indonesia to manage

its or their interest, or to prepare for the establishment and development of its/their business in Indonesia.

The foreign representative office shall be led by one or more Indonesian or foreign citizens considered to be the representative office executive. The appointment of a representative office executive shall be based on the letter of appointment from the relevant foreign company or groups of foreign companies. In order to obtain the license for this type of representative office, the application must be submitted to the Indonesian Investment Coordinating Board ("**BKPM**").

The activities of this type of foreign representative office are limited to the role of supervisor, intermediary, coordinator, or manager of the foreign company group's interests. Further, a foreign representative office must not participate in managing the foreign company, its subsidiary, or its branches in Indonesia; moreover, it is not allowed to generate revenues in Indonesia. A foreign representative office shall not engage in any agreement or sale and/or purchase transaction of goods and services with an Indonesian company or Indonesian nationals.

2. Foreign Trade Representative Office (*Perwakilan Perusahaan Perdagangan Asing*)

A foreign trade representative office is established by a foreign company or a group of foreign companies to act as its/their representative in Indonesia. It may be established as either a selling agent, manufacturer's agent, and/or purchasing agent. According to Article 4 of the Regulation of the Ministry of Trade No. 10 of 2006 regarding the Procedure of Issuing the License of Foreign Trade Representative Office ("**Permendag No. 10/2006**"), a Foreign Trade Representative Office is prohibited from conducting trades, transactions, or sales activities which represent an entire transaction from beginning to end (e.g., resulting from tender document submission, contract signing, and claims settlement).

The scope of a foreign trade representative office is limited to those activities as referred to in Article 3 of Permendag No. 10/2006, namely:

a. Introduction, promotion and enhancement of marketing of goods produced by foreign companies or association of foreign companies which appoint the foreign trade representative office, as well as provide information or directives for the use and import of goods to companies/users in the country ;
b. Market research and supervision of domestic sales in Indonesia in the framework of marketing goods of foreign companies or association of foreign companies which

appoint the foreign trade representative office; and

c. Market research of goods needed by foreign companies or association of foreign companies which appoint the foreign trade representative office as well as provide information and directives related to the export of the goods to companies in the country;

d. Close contracts for and on behalf of the appointing companies with companies in Indonesia in the framework of the exports.

3. Foreign Construction Services Representative Office

As specified in the Government Regulation of the Republic of Indonesia No. 28 of 2000 regarding the Business and Role of Construction Society ("**PP No. 28/2000**") in conjunction with the Regulation of the Minister of Public Works No. 05/PRT/M/2011 regarding the Guidance on the Requirements to Grant Foreign Construction Company Representative License ("**Permen PU No. 05/2011**"), in order to establish the representative office for foreign construction services, the foreign construction company ("**BUJKA**") shall obtain a permit called the License of Representative Office for Foreign Construction Services (*Izin Perwakilan Badan Usaha Jasa Konstruksi*/"**IUJK**"). The IUJK will only be granted to BUJKA, which is classified as "large" based on the certificate issued by the National Construction Services Development Board (*Lembaga Pengembangan Jasa Konstruksi*/"**LPJK**"). The Ministry of Public Works will issue the IUJK for a period of three years, and the license can be extended.

When engaging in construction services activities, a foreign construction services company established pursuant to foreign laws, and which is domiciled offshore to comply with laws and regulations equivalent to the Indonesian law on limited liability companies (*Perseroan Terbatas*/"**PT**") and has representative offices that have acquired IUJK, shall establish a joint operation with Indonesian construction company(ies) ("**BUJK**"). Pursuant to Article 10 of Permen PU No. 05/2011, the BUJK shall comply with the following requirements:

- It is in the form of PT;
- 100% owned by one or more Indonesian citizens and/or a BUJK;
- It is classified as a "large" BUJK;
- It possesses a Business Entity Certificate; and
- It possesses an IUJK.

The BUJK may only be involved in a complex, high risk, and/or highly technical construction project as stated in Article 11 of Permen PU No. 05/2011.

2.3 What is the process, time required, and cost for setting up each?

	Procedure	Time (days)	Costs (IDR)*
1	Establishment of Limited Liability Company	120	11,800,000
2	Obtaining the Company Register Code ("TDP")	60	5,000,000
3	Registration of Investment at PTSP BKPM	3	-
4	Investment Permit In Principle	7	-
5	Location Permit	14-30	-
6	Construction Building Permit	90	(depends on the location, floor space, and building size)
7	UUG/HO	30	(depends on the location and building size)
8	Business Permit	7	-

*) *For illustration only. The real duration and cost may vary depending on the circumstances.*

In addition to the above, a lawyer's fee would be necessary, which generally costs +/- USD 15,000.

Requirements and procedures in obtaining licenses for the three types of representative office are as follows:

1. Foreign Representative Office

Referring to the rules and regulations regarding the operations of representative offices in Indonesia as stated in the framework of Perka BKPM No. 12/2009, the permits or licenses required to establish a foreign representative office are as follows:

a. A letter of approval issued by BKPM as the main license (obtaining this letter normally takes 10 working days);
b. A letter of domicile from the local government;
c. A taxpayer registration number (NPWP) from the tax office; and
d. A company registration certificate from the Company Registration Office.

Subsequently, the initial requirements to obtain the above permits or licenses are as follows:

1. Letter of appointment from the parent company;
2. Power of Attorney to sign the application if the participant is represented by another party;
3. Articles of association of the parent company and any amendment(s);

4. Copy of valid passport (for foreigners) or copy of identification card (for Indonesians) for those persons nominated as a representative office executive;
5. Letter of statement concerning the willingness to stay and only work as a representative office executive without engaging in any other business in Indonesia.

The process of establishing a foreign representative office will take approximately 38 days, and it may cost around IDR 10,000,000 in application fees.

2. Foreign Trade Representative Office

In order to conduct its activities, the trade representative office must have a Foreign Representative Office Trade Business License (*Surat Izin Usaha Perwakilan Perdagangan Asing* "**SIUP3A**"), which is valid for a maximum of three years unless otherwise specified in the appointment letter, and can be renewed in conformity with the appointment letter.

There are five types of SIUP3A:

1. New SIUP3A for Principal Office;
2. New SIUP3A for Branch Office;
3. SIUP3A Amendment;
4. SIUP3A Renewal; and
5. Replacement of SIUP3A that is damaged or lost.

In general, the SIUP3A may be obtained by written application to the head of the principal office or branch office or foreign trade representative office or proxy to the Directorate of Business Management and Registration of the company as the SIUP3A issuing official by filling in the application implementation plan.

Foreign trade representative offices are obliged to do the following:

1. Pay a deposit to the Bank of Indonesia;
2. Conduct company registration at least three months from the date of SIUP3A issuance;
3. Provide a realization activity report to the SIUP3A issuing official, with the following schedule:
    - First report, January–June of the current year, to be conveyed no later than July 31 of the current year;
    - Second report, July–December of the current year, to be conveyed no later

than January 31 of the following year;

4. Provide report and data/information concerning the realization of activities if at any time required by the minister or SIUP3A issuing official;
5. Provide written report to the SIUP3A issuing official, with reasons for the closure, and return the original SIUP3A, if the foreign trade representative office did not conduct its activities for six months in succession or closed the office.

The process of establishing the trade representative office will take approximately 38 days, and it may cost around IDR 10,000,000 in application fees.

3. Foreign Construction Services Representative Office

The representative of foreign construction business companies ("BUJKA") are allowed to conduct its business in Indonesia in accordance with the Regulation of Minister of Public Works Number 05/PRT/M/2011 concerning Guidance of Requirements for Granting the Licenses for Representative of Foreign Construction Business Entities ("RM No. 05/2011"). According to Article 1 point 3 of RM No. 05/2011, BUJKA are the business entities established according to and domiciled in foreign state, having its representative in Indonesia, and are deemed equal to the legal entities in form of limited liability companies having its business in license ("Representative License") from the Minister of Public Works or the appointed officer under the name of Minister. The Representative License is given for 3 (three) years and may be extended in accordance with the related regulations and the recommendation given by the supervision team of BUJKA. Once the BUJKA obtained the Representative License, they may conduct the construction services business in all region of Republic of Indonesia. However, the BUJKA are only allowed to do the complex, high risks and/or high technology construction projects.

The application of the Representative License regulated in the Minister Regulation includes the application of new license, extension of the license, data changes, and/or discontinuance of the license. For the application of new and extension of the license, it will be charged with the administration fees as follows :

a. The field of construction planning consultation or supervision services equivalent with $US5,000 (five thousand United States Dollar); or
b. The field of construction performance equivalent with $US10,000 (ten thousand United States Dollar).

The BUJKA shall submit the application of the new Representative License and the following

required documents :

a. The legalized copy of the deed of establishment of the BUJKA;
b. The company profile of BUJKA;
c. The recommendation letter from the Embassy of origin country of the BUJKA in Indonesia which states that the related BUJKA are legally registered business entities and have good reputation;
d. Copy of Construction Service License of BUJKA's parent company, which is still valid;
e. Copy of evidence of ability of BUJKA's parent company
f. Certificate of BUJKA of accreditation from the National Construction Services Development Board (*Lembaga Pengembangan Jasa Konstruksi*"**LPJK**") ;
g. The appointment letter of the head of the BUJKA;
h. The newest financial report of BUJKA's parent company;
i. The curriculum vitae of the head of BUJKA
j. Copy of the passport or identity of the head of BUJKA; and
k. The domicile letter of the BUJKA in Indonesia that issued by the local sub-district.

The process of establishing the foreign construction services representative office will take approximately 38 days, and it may cost around IDR 10,000,000 in application fees.

2.4 Are there any restraints on business activities to be conducted by business organizations in Indonesia?

Companies shall conduct their business activities according to the business sectors as specified in the companies' articles of associations.

Besides the business activity limitations, companies are also obliged to implement corporate social responsibility ("**CSR**") as contribution to society. The provisions are stated in the two regulations below:

1. Article 15, item (b) of the Investment Law states:

"Every investor shall have the obligations:
b. to implement corporate social responsibility"

2. Article 1, paragraph 3 of Law No. 40 of 2007 regarding Limited Liability Company ("**Company Law**") states:

"The Social and Environmental Responsibility is a Company's commitment to participate in sustainable economic development in order to enhance the quality of life and the environment that benefits the Company itself, the local community, as well as society at large."

As we may conclude, both provisions have the same goals regarding CSR as a company's commitment to sustainable economic development in an effort to improve the quality of life and the environment.

2.5 What are the ongoing obligations in relation to each of the forms of business organizations?

Limited Liability Company (*Perusahaan Terbatas* ("PT"))

A PT's major ongoing obligations are as follows:

- to have articles of association, which must also include the objectives, purposes, and activities of the PT
- to hold a General Meeting of Shareholders at least once a year, after which a minutes of the Meeting signed by all attendees of the Meeting must be produced
- to get approval from the Minister of Law and Human Rights for changes in the articles of association concerning the following:
  - the name and/or domicile of the PT
  - the objectives, purposes, and activities of the PT
  - the PT's period of incorporation
  - the PT's authorized capital
  - reduction in the PT's subscribed and paid-up capital
  - the PT's status (from a closed (*tertutup*) PT to an open (*terbuka*) one or vice versa)
- to notify the Minister of Law and Human Rights regarding changes in the articles of association concerning matters other than those enumerated above
- to have the PT's name and full address stated in each of the PT's correspondence, deeds, announcements, and printed materials
- to keep accounting books
- for PTs whose operations are in the field of or related to natural resources: to perform corporate social and environmental responsibility, which must be budgeted for and incorporated in the PT's expenditures and reported in the PT's annual report.

3. CORPORATIONS

3.1 What are the different types of companies recognized in Indonesia?

Limited Liability Company, Single Proprietorship, Limited Partnership Company *(Commanditaire Vennotsschaap/CV)*, Firm, and Cooperative.

3.2 What is the process of incorporating a company?

Incorporation of a company (Limited Liability Company) requires the process below:

- Application and Approval on the use of PT name
- Drawing up PT Deed of Establishment
- obtaining the certificate of registered domicile
- obtaining the registered tax number ("**NPWP**")
- opening a bank account in a company's name and payment of capital stock
- obtaining the certificate of payment of capital stock from a bank (it is necessary to pay more than one-fourth of the minimum authorized capital stock (IDR 50 million))
- submission of related documents, such as the certificate of incorporation and that of payment of capital stock, to the Ministry of Justice and Human Rights
- obtaining approval from the Ministry of Law and Human Rights

3.3 How can a minority shareholder protect its interests?

- Pursuant to Article 62 of the Company Law, the shareholders who object to a company's behavior, as listed below, have the right to require purchase of their shares, at reasonable cost to the company:

  a. change in the articles of association
  b. the transfer or encumbrance of the company's assets that have a value of more than 50% of the company's net assets
  c. merger, consolidation, acquisition, and separation of the company

  If the shares required to be purchased exceed the limit of the provision regarding a company's share repurchase (10% of the company's issued capital), the company must make an effort to have the remaining shares purchased by a third party.

- The right to request a convention of the GMS (Articles 79 and 80 of the Company Law)

  Shareholders' meetings consist of the annual general shareholders' meeting (the "**GMS**") and temporary GMS meetings. One person or more of the shareholders jointly representing one-tenth or more of the total shares with legal voting rights has the right to request the convening of a GMS. If the Board of Directors or the Board of Commissioners fails to perform the call for a GMS within 30 days, the shareholders requesting the GMS may submit a request to the head of the District Court to grant a permit to the shareholders to perform the call for a GMS themselves.

- The right to claim for damages against Directors (Article 97 of the Company Law)

  On behalf of the company, shareholders representing at least one-tenth of the total number of shares with voting rights, may submit a claim for damages against a member of the Board of Directors who has caused a loss to the company due to his/her fault or negligence.

- The right to claim for damages against the Board of Commissioners (Article 114, paragraph 6 of the Company Law)

  On behalf of the company, the shareholders representing at least one-tenth of the total number of shares with voting rights, may submit a claim for damages against a member of the Board of Commissioners who has caused a loss to the company due to his/her fault or negligence.

- The right to submit a claim for inspection of the company to a District Court (Article 138 of the Company Law)

  One shareholder or more who represents at least one-tenth of the total number of shares with voting rights, may submit an application for inspection of the company to a District Court. Such an inspection may be performed to obtain data or an explanation if there are suspicions concerning the following:

  a. the company has committed an illegal act that may cause an adverse effect on the shareholders or a third party; or
  b. the members of the Board of Directors or the Board of Commissioners have committed an illegal act that may cause an adverse effect on the company or shareholders or third parties.

The application as mentioned above is submitted after the applicant has first applied to the company in a GMS for the data or information, but the company has not yet provided the requested data or information.

- The right to propose the company's dissolution (Article 144 of the Company Law)

  One or more shareholders representing at least one-tenth of the total number of shares with voting rights, may submit a proposal regarding the company's dissolution to the GMS.

  The District Court may dissolve a company at the request of the shareholders, the Board of Directors, or the Board of Commissioners because the company is not in a condition to continue its operations.

3.4 Are there any corporate governance norms?

Yes. The National Committee for Corporate Governance that has been established by Decision of the Coordinating Minister for Economy, Finance and Industry Number: KEP/31/M.EKUIN/08/1999, published Indonesia's Code of Good Corporate Governance ("**GCG Code**") in 2006. This GCG Code is not a regulation but instead a guide for companies to exercise their business in Indonesia.

However, there are some sectoral regulations regarding the implementation of the GCG Code, which are as follows:

- Decision of the Minister of State Owned Company Number KEP-117/M-MBU/2002 regarding the Application of Good Corporate Governance in the State Owned Companies.
- Regulation of Bank of Indonesia Number 8/4/PBI/2006 regarding the Application of Good Corporate Governance in the Commercial Bank as amended by the Regulation of the Bank of Indonesia Number 8/14/PBI/2006.

3.5 Are there any restrictions on a foreign-owned Indonesian company against raising capital/debt from Indonesian markets?

There is no particular restriction on a foreign-owned company raising capital/debt.

3.6 Can an Indonesian company have foreign directors?

An Indonesian company can have foreign directors. However, the position of Director handling the

personnel only applies to an Indonesian citizen.

There is no regulation expressly setting forth that the director of a company in Indonesia shall have domicile in Indonesia. However, practically, in the context of director's duties to manage the company's business in which that person is located in Indonesia, at least one Director shall have domicile in Indonesia.

3.7 Are there any norms for the sharing of profits?

All net earnings after deduction for reserve funds shall be distributed to the shareholders as dividend, according to the determination of the GMS (Article 71 of the Company Law). The dividends may only be distributed if the company has a positive profit balance (Article 71, paragraph 2 of the Company Law).

The company may distribute an interim dividend before the end of the company's accounting year, as long as it is stated in the company's articles of association. The distribution of an interim dividend is applicable if the amount of the company's net assets is not less than the issued and paid-up capital plus statutory reserve funds (Article 72, paragraphs 1 and 2 of the Company Law). The distribution of the interim dividend shall not disrupt or cause the company to become unable to fulfill its obligation to the creditors or disrupt the activities of the company (Article 72, paragraph 3 of the Company Law). The distribution of an interim dividend shall be determined based on the resolution of the Board of Directors after having obtained approval from the Board of Commissioners (Article 72, paragraph 4 of the Company Law).

If after the accounting year ends the company has apparently suffered a loss, the shareholders shall return to the company the interim dividend that has been distributed. If the shareholders fail to return the interim dividend, the Board of Directors and the Board of Commissioners shall be jointly or severally liable for the loss suffered by the company (Article 72, paragraphs 5 and 6 of the Company Law).

3.8 What type of shares can a company issue?

The articles of incorporation shall determine one or more share classifications. Among others, share classifications are the following:

a. shares with voting rights or without voting rights;
b. shares with a special right to nominate members of the Board of Directors and/or members of the Board of Commissioners;

c. shares which after a certain period of time will be withdrawn or exchanged with another share classification;

d. shares that provide rights to their owner to receive dividends firstly over the other shareholders from different share classifications, for the cumulative or non-cumulative distribution of dividend; and

e. shares that provide rights to their owner to receive allocation of the remainder of the company's assets in liquidation, firstly over the other shareholders with different share classifications (Article 53 of the Company Law).

If there is more than one classification of shares, the articles of association shall prescribe one of them as common shares (Article 53, paragraph 3 of the Company Law). Common shares means the shares with voting rights in the GMS in relation to the company's management team, which has the right to receive dividends and which has the right to receive allocation of the remainder of the company's assets in liquidation (Elucidation of Article 53, paragraph 3 of the Company Law).

3.9 Are there any requirements in relation to the frequency and mode of holding board meetings?

There is no requirement in relation to the frequency and mode of holding a BOD/BOC meeting. The articles of association of the company will determine the requirements to conduct the BOD/BOC meeting.

3.10 What responsibilities and liabilities do company directors have?

The Board of Directors shall be responsible for the management of the company, and the management shall be performed by each member of the Board of Directors in good faith and with full responsibility (Article 97, paragraphs 1 and 2 of the Company Law). Each member of the Board of Directors shall be fully and personally liable for the losses of the company if they result from his/her fault or negligence in performing his/her duties in accordance with the provisions as referred to in the paragraph 2 of Article 97 (Article 97, paragraph 3 of the Company Law).

If a bankruptcy occurs due to the fault or negligence of the Board of Directors, and the assets are not sufficient to pay all of the company's obligations concerning the bankruptcy, each member of the Board of Directors shall be jointly and severally liable for all obligations that remain unpaid from the bankruptcy assets (Article 104, paragraph 2 of the Company Law). However, a member of the Board of Directors shall not be liable for the bankruptcy of the company if it is proven as follows:

a. the bankruptcy did not result from his/her fault or negligence;

b. he/she has conducted the management of the company in good faith, prudently, and with full responsibility in the pursuit of its purposes and objectives;

c. there is no conflict of interest, either directly or indirectly, over the management of the company; and

d. he/she has taken precautionary measures to avoid the bankruptcy.

4. LIQUIDATION

4.1 Please give a brief outline of the procedure involved in the winding-up or liquidation of a company in Indonesia. Are there any requirements specific to Indonesia?

Liquidation of the company occurs (Article 142, paragraph 1 of the Company Law):

a. Based on a resolution of the GMS;[5]

b. Due to the expiry of the company, as prescribed in the articles of association;

c. Based on a court order;[6]

d. Due to a revoked bankruptcy statement, etc.; or

e. Due to the revocation of the company's business permit, so that the company is obliged to conduct liquidation according to prevailing regulations.

Appointment of liquidator

If the dissolution occurs based on a resolution of the GMS, or the duration as set forth in the articles of incorporation ends, or the bankruptcy is revoked, and the GMS does not appoint any liquidator, the Board of Directors shall act as the liquidator (Article 142, paragraph 3 of the Company law). If the dissolution occurs based on a court order, the court order must include the appointment of a liquidator (Article 146, paragraph 2 of the Company Law).

[5] A GMS to approve the liquidation of the company can be convened if at least three-fourths of the total shares issued with voting rights are present or represented and the resolutions thereof shall be valid if approved by more than three-fourths of the total votes cast at the meeting (Article 89, paragraph 1 of the Company Law).

[6] The District Court can dissolve the company upon a request from the following: (a) the prosecutor's office, because the company has violated the public interest or the company has committed an act that violates regulations; (b) the relevant party, because the deed of establishment is found to be defective; or (c) the shareholders, Board of Directors, or the Board of Commissioners, because it is no longer possible to run the company.

Duty of liquidator

Within the latest period of 30 days as of the company's dissolution, the liquidator shall be obliged to notify the following persons:

a. All creditors regarding the company's dissolution, by way of announcing the company's dissolution in a newspaper and in the State Gazette of the Republic of Indonesia; and
b. The Minister, about the company's dissolution that is to be registered in the Company Registry and states that the company is in liquidation (Article 147, paragraph 1 of the Company Law).

The liquidator's obligations in the settlement of a company's assets in the liquidation process shall cover the following:

a. Recording and collecting the assets and debts of the company;
b. Publishing the plan for distribution of assets from the liquidation in the newspaper and the State Gazette of the Republic of Indonesia;
c. Making payment to creditors;
d. Making payment from the remaining liquidation assets to the shareholders; and
e. Other acts required for the settlement of the assets (Article 149, paragraph 1 of the Company Law).

If the liquidator estimates that the company's liabilities are greater than the company's assets, the liquidator shall be obliged to submit a request regarding the company's bankruptcy, unless the prevailing laws and regulations provide otherwise. Furthermore, unless all creditors whose identities and addresses are known, agree to settle outside of bankruptcy (Article 149, paragraph 2 of the Company Law).

Creditors can submit an objection to the plan to distribute the company's assets resulting from the liquidation within the latest period of 60 days as of the announcement date (Article 149, paragraph 3 of the Company Law).

If the liquidator rejects the submission of an objection, creditors may submit a claim to the District Court within the latest period of 60 days as of the rejection date (Article 149, paragraph 4 of the Company Law).

Creditors who file their payment claims according to the period provided by the liquidator and have their claims subsequently denied by the liquidator, may submit a claim to the District Court within the latest period of 60 days as of the rejection date (Article 150, paragraph 1 of the Company Law).

The liquidator shall be obliged to notify the Minister and announce the final result of the liquidation process in a newspaper. This is conducted after the liquidator completes the payment of the remaining assets to all shareholders, and the GMS gives full acquittal and discharges the liquidator, or after the court has received the appointed liquidator's report (Article 152, paragraph 3 of the Company Law). The notification and announcement shall be performed within the latest period of 30 days as of the date when the liquidator's report is received by the GMS or the court (Article 152, paragraph 7 of the Company Law). The Minister shall register the end of the company's status as a legal entity, and omit (remove) the company's name from the Company Registry, after receiving the notification (Article 152, paragraph 5 of the Company Law).

Other procedures

Reporting the liquidation to the BKPM.

Returning the NPWP to the National Tax Administration Agency. A tax inquiry is a condition of the procedure, and a long, strict inquiry may be held.

4.2 Please give a brief outline of the bankruptcy proceedings in Indonesia. Are there any requirements related to the filing specific to Indonesia?

The Bankruptcy Law established in 1905 (Law regarding Bankruptcy (*Faillissements-Verordening, Staatsblad 1905 Nomor 217 juncto Staatsblad 1906 Nomor 3481*) was amended by the Law No. 4 in 1998, and the current Bankruptcy Law was established in 2004, namely, Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligation.

Bankruptcy procedure (Article 1)

Cause of petition
Debtor has two or more creditors and fails to pay at least one debt that is due and payable (Article 2, paragraph 1).

Those who have the right of petition (Article 2)
Debtor or Creditor

Prosecutor also has standing to submit a petition for declaration of bankruptcy in the public interest.

Where the debtor is a bank, only the Central Bank is permitted to file a petition.

The Capital Markets Supervisory Board may file a petition for declaration of bankruptcy against debtor who is a party conducting business activities as a securities company, stock exchange, clearing and guarantee institute, or depository and settlement institution.

The Minister of Finance, if the debtor is an insurance, reinsurance, pension fund, or state-owned company conducting activities in the public interest.

Conservation of debtor's assets (Article 56)
At the same time as a bankruptcy declaration by the courts, actions, except for setting-off, confiscation of pledge of cash and so on, such as recovering debts and taking actions against debtors, are automatically halted. The halting period is for a maximum of 90 days.

Within the bankruptcy declaration decision, curator must be appointed and a supervising judge must be designated from among judges of the Commercial Court (Article 15, paragraph 1). If a debtor, creditor, or party authorized to file a request for a declaration of bankruptcy does not propose the appointment of a curator to the court, the Estate Property Bureau will be appointed as curator (Article 15, paragraph 2). The curator shall submit a report to the supervisory judge about the condition of the bankrupt's assets and the execution of his/her tasks once every three months (Article 71, paragraph 1).

Transition to settlement procedure
The bankrupt debtor is entitled to provide information on the settlement plan, defend the settlement plan, and change the settlement plan during the negotiations. The settlement plan will be accepted if it is approved at the creditor's meeting by more than half of the concurrent creditors that attend the meeting and those recognized or temporarily recognized creditors that represent at least two-thirds of the total recognized or temporarily recognized concurrent claims from the concurrent creditors or their proxies that attend the meeting (Articles 150 and 151).

5. FOREIGN INVESTMENT REGULATIONS

5.1 What are the sources of law regulating foreign investment in Indonesia?

In 2007, Law No. 25 of 2007 concerning Investment ("**Law No. 25/2007**") was promulgated. The Foreign Investment Law (in 1967), the Domestic Investment Law (in 1968), the Foreign Investment Amendment Law (in 1970), and the Domestic Investment Amendment Act (in 1970) have been revoked and declared invalid.

Regulation of the President No. 36 of 2010 concerning List of Business Fields that are closed to Investments and Business Fields that are conditionally open for Investment ("**Perpres No. 36/2010**"), providing the norms and conditions of the business areas in which investments inside or outside Indonesia are restricted or permitted, with some conditions.

Regulation of the Chairman of the Investment Coordinating Board Number 12 of 2009 Concerning Guidance and Procedures of Investment Application.

5.2 What are the various methods by which foreign investment in Indonesia is possible?

Pursuant to Law No. 25/2007, foreign investment shall be made in the form of a Limited Liability Company based on the law of the Republic of Indonesia, unless otherwise prescribed by law.

Foreign investors making an investment in the form of a limited liability company shall be conducted in the following ways:[7]

a. by having shares when the company is established;
b. by purchasing the shares; and
c. by executing any other method pursuant to the rules of law.

5.3 What is the current foreign direct investment policy?

According to Article 12, paragraph 1 of Law No. 25 of 2007, basically all business sectors shall be open to investment activities, except for business sectors that are declared to be closed and open with certain conditions. The list of business fields that are closed or open with certain conditions is set forth in Appendix II of Perpres No. 36/2010.

5.4 What are the circumstances under which regulatory approval is required?

Any foreign direct investment shall obtain BKPM and related governmental agency approval, permission, and/or registration.

[7] Article 5, paragraph 3 of Law No. 25/2007.

5.5 Can a foreign company set up a wholly owned subsidiary in Indonesia?

Yes, as long as the business sector is open for 100% foreign investment. In addition, according to the Company Law, two or more persons shall establish a Limited Liability Company.

5.6 How long does regulatory approval take?

Based on Perka BKPM No. 12/2009:

- Registration for investment: one working day
- Investment Permit in principle: three working days
- Business Permit: no longer than seven days after the application has been completely and correctly received

However, practically, it is expected to take more time to obtain approval from the relevant authorities.

5.7 Are there any restrictions on foreign ownership of land?

Only Indonesians are permitted to own land. A foreigner or foreign enterprise can only acquire the right to build, cultivate, and use land.

The right to build ("**HGB**") is the right to control and utilize land for a certain period to erect and possess buildings/installations on land that does not personally belong to the builder. It is transferable and bankable. Period of validity of grant of right to build is 30 years. Upon the request of the holder of the right to build and in consideration of needs as well as the condition of the building, the term may be extended for a period of 20 years.

The right to development ("**HGU**") is the right to manage land directly controlled by the state for farming, plantation, fishery, and/or animal husbandry company. The initial term is 35 years and is extendable for an additional 25 years.

The right of use ("**HP**") is the right to control, utilize and/or collect/harvest products of the land, which is under direct state control, or land that is under ownership right by another person for private purposes or a company who grants authorities and responsibilities stated in the decision of grant by an authorized official or in an agreement with the landowner, which is not a land lease agreement or a land management agreement and which concerns all matters that do not contravene Law No. 5 of 1960 concerning Basis Agrarian. It is transferable and bankable. The initial term is 25 years and is extendable for an additional 20 years.

6. LABOR

6.1 What are the principal regulations governing rights and obligations of employees?

The principal regulations governing rights and obligations of employees are Law No. 13 of 2003 concerning Labor ("**Labor Law**"), Law No. 2 of 2004 concerning Industrial Relations Dispute Settlement ("**Industrial Relations Law**"), and Law No. 21 of 2000 concerning Labor Unions. The Labor Law prescribes working hours, dismissal procedures, retirement allowance, and other employment conditions.

6.2 Are there any maximum working hours prescribed for employees?

Maximum working hours are seven hours per day and 40 hours per week for a six working-day week. It could be eight hours per day for a five working-day week.

6.3 How can the services of an employee be terminated?

Based on the Labor Law, entrepreneurs and the government shall be obligated to undertake any efforts to avoid termination of employment. Therefore, before any termination is effected, the Labor Law requires that entrepreneurs and labor unions or workers (if the relevant worker is not affiliated to any union) pursue negotiations before termination. If the negotiations prove fruitless, then the entrepreneur may file a petition for termination with the Industrial Relations Dispute Resolution Board ("**LPPHI**").[8] However, not all terminations shall have the LPPHI's prior approval. The Labor Law also regulates termination that might be directly effected, without having to petition the LPPHI for a ruling as follows:[9]

1. Worker is still under probation, and it has been so required previously in writing.
2. Workers tendering resignations, in writing voluntarily without any indication of coercion/intimidation from the entrepreneur, or employment relationship comes to an end according to the work agreement for a specified time for the first time.
3. The worker has reached retirement age according to the stipulation in the work agreement, company regulations, joint work agreement, or laws and regulations.

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8 Article 151 of the Labor Law.

9 Article 154; Article 160, paragraphs 3 and 5; Article 168, paragraph 1; and Article 169, paragraph 3 of the Labor Law.

4. The worker passes away.
5. The worker is unable to carry out work for six consecutive months due to being arrested by the authorities because of criminal action not resulting from the entrepreneur's complaint.
6. If the courts have ruled on the criminal case before the lapse of the six-month period and the worker is declared guilty.
7. The worker is absent for five consecutive working days or more, without leave in writing and accompanied by valid evidence, and has been duly summoned by the entrepreneur on two consecutive occasions in writing.
8. The entrepreneur is not proven to have committed the violation as charged by the worker requesting termination.

6.4 Are there mandatory requirements for grant of leave or public holidays?

The minimum annual leave is 12 working days after the employee concerned has worked for 12 consecutive months.[10] Employees are entitled to public holidays determined by the government.[11]

Entrepreneurs are under an obligation to provide workers with adequate opportunity to perform their religious obligations.[12]

Female workers/laborers who feel pain during their menstruation period and notify the entrepreneur about this are not obliged to come to work on the first and second day of menstruation.[13] They are also entitled to a one-and-a-half month period of rest before they are estimated by an obstetrician or a midwife to give birth to a baby, and another one-and-a-half month period of rest thereafter.[14] Moreover, a female worker/laborer who has a miscarriage is entitled to a period of rest of one-and-a-half months or a period of rest as stated in the medical statement issued by the obstetrician or midwife.[15]

6.5 Can employment contracts contain restrictive covenants such as non-compete clauses?

Labor Law does not regulate non-compete clauses in the employment contract. Therefore, a non-

10 Article 79, paragraph 2, item (c) of the Labor Law.

11 Article 85, paragraph 1 of the Labor Law.

12 Article 80 of the Labor Law.

13 Article 81, paragraph 1 of the Labor Law.

14 Article 82, paragraph 1 of the Labor Law.

15 Article 82, paragraph 2 of the Labor Law.

compete clause can be included in the employment contract. However, the inclusion of non-compete clauses in employment contracts must not interfere with the right of a person to get a decent job, because that right is a constitutional right for every citizen of Indonesia, as stated in Article 27, paragraph 2 of the Constitution of the State of the Republic of Indonesia Year 1945.

6.6 Can the employment contract compel employees to work for a minimum period of time?

Working hours may be stipulated in the employment contract. However, the stipulation shall not contravene the provision of working hours as stated in the Labor Law.

6.7 Are women employees entitled to maternity leave?

Women employees are entitled to one-and-a-half months' leave both before and after childbirth, as maternity leave.

6.8 Are male employees entitled to paternity leave?

There is no provision prescribing paternity leave in the Labor Law.

6.9 What are the requirements for the issuance of shares by an Indonesian company to its employees/directors?

There are no regulations that specifically regulate the issuance of shares to its employees. The Company law only states that the issuance of shares to employees can be conducted without first offering those shares to existing shareholders.

6.10 Can employees of an Indonesian company be granted employee stock options in a foreign company?

Please see the response for question number 6.9

6.11 Are employee stock options eligible for favorable tax treatment?

We are of the opinion that we do not have the competence to respond to this question.

7. INTELLECTUAL PROPERTY

7.1 What types of intellectual property rights are protected in Indonesia?

Trademark rights

Applicable Law: Law No. 15/2001 dated August 1, 2001, concerning Marks.

Prescribed regulations regarding prior use, transferring trademark right based on licenses, penalty for violation, and other rules.
Scope of Protection: trademarks used on products and services and geographical indication.

Follows the principle of first-to-file: a person who files a certain trademark first is permitted to register the trademark.

Indonesia Follows 1 to 42 of the international Intellectual Classification of Goods and Services (Government Regulation No. 241993 regarding Classes of Goods and Services).

Filing service marks and collective marks is possible.

Cannot file famous trademarks in Indonesia. Cannot register trademarks similar to brand names to which another person is already entitled.

Length of protection: 10 years from receipt of filing, regarding which the period can be extended by application.

Patents

Applicable Law: Law No. 14/2001 dated August 1, 2001, concerning Patent

Invention means an inventor's idea situated in an activity that solves a specific problem in the field of technology and is able to take the form of a product or process or to perfect/finish and develop a product or process.

Patent means exclusive rights granted by the state to the inventor over the results of the inventor's invention in the field of technology, which is to be exploited by the inventor for a certain period of time or permitted to be exploited by another party with the inventor's agreement.

Patent holders are obligated to make products or utilize processes in Indonesia regarding which patents have been granted.

Follows the principle of first-to-file.

Length of protection: 20 years starting from the date submission of patent application is received, except for simple patents which are granted for 10 years starting from the filing date. A Simple patent is granted for one invention.

Copyright

Applicable Law: Law No. 19/2002 dated July 29, 2002, concerning Copyrights

Scope of Protection: any work of science, art or literature, including computer programs and databases.

Copyright arises automatically on creation of the work. To assert copyright against any third party, the copyright needs to be registered.

Length of protection: computer programs, cinematographic works, photographic works, and databases are protected for 50 years from their first publication. Works such as literature, art, and music are protected for 50 years from their authors' death.

Industrial Design

Applicable Law: Law No. 31/2000 dated December 20, 2000, concerning Industrial Designs
Scope of Protection: creations concerning forms, configurations or compositions of lines or colors, or lines and colors or combinations thereof which have three dimensional or two dimensional shapes providing aesthetic impressions and are able to be manifested within three dimensional or two dimensional patterns/models/systems of how something is to be done, and which are able to be used for the production of a certain product, good, industrial commodity, or handicraft.

Registration is required to be protected. Novelty is required for registration.

Substantive examination is performed only if objections are filed against the registration.

Length of protection: 10 years from the filing date with no extension.

Integrated circuit layout design

Applicable Law: Law No. 32/2000 dated December 20, 2000, concerning Integrated Circuit Layout Designs

Scope of Protection: integrated circuit layout design.

Registration is required to be granted protection. For registration, it is required that the design not be a common design when it was created.

Length of Protection: 10 years from filing or first commercial exploitation.

Trade secrets

Applicable Law: Law No. 30/2000 dated December 20, 2000, concerning Trade Secrets.
Scope of Protection: information not known to the public in the field of technology and/or business, which has economic value because of its utilization in business activities and which is protected as secret by the trade secret owner.

Rights regarding trade secrets arise without registration. However, a trade secret is required to be registered to enter into any license agreement.

Protection of Plant Varieties

Applicable Law: Law No. 29 of 2000 dated December 20, 2000, concerning Protection of Plant Varieties.

Scope of protection: plant varieties from new kinds of species of plants that are unique, uniform, stable, and identified.

Length of Protection: 25 years for annual plants and 20 years for perennial plants commencing from the granting date of the Plant Variety Protection registration.

7.2 Are there any international treaties regarding intellectual property to which Indonesia is not a party?

Patents

Patent Cooperation Treaty and Regulations resulting from the state members of WIPO meeting in Washington on June 19, 1970.

Trademarks

Trademark Law Treaty dated October 27, 1994, as drawn up by state members of WIPO in Geneva, Switzerland.

Copyrights

World Intellectual Property Organization Performances and Phonograms Treaty
World Intellectual Property Organization Copyright Treaty

Others

Berne Convention for the Protection of Literary and Artistic Works
Paris Convention for the Protection of Industrial Property
WIPO Convention
Agreement Establishing World Trade Organization and adopted principle agreement of Trade Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods.
Nairobi Treaty on the Protection of the Olympic Symbol

7.3 Are there any regulations or guidelines by public institutions, such as the Fair Trade Commission or some other competition authority, concerning intellectual property licenses?

Yes. Regulation of Commission for the Supervision of Business Competition No. 2 of 2009 regarding the Exemption Guideline of Applying Law No. 5 of 1999 concerning Ban of Monopolistic and Unfair Business Competition Practices Against Agreement in Association with Intellectual Property Rights

8. EXCHANGE CONTROL

8.1 Are there any restrictions on the amount of local currency that may be brought into or taken out of Indonesia?

There is no regulation, which specifically prescribes the restriction on the amount of local currency that may be brought into or taken out of Indonesia. However, there are some regulations, which prescribe the obligation of making report regarding the transfer of money in Indonesian currency.

Based on Bank Indonesia Regulation Number 12 of 2010 concerning Foreign Debt Reporting Obligation ("**PBI No. 12/2010**"), the reporting party[16] that has foreign debts either in foreign exchange as well as in rupiah, based on the following: loan Agreements; debt securities (including letter of credit, bankers' acceptances, bonds, commercial papers, promissory notes, and medium-term notes); trade credit; and other loans, is obligated to make a report to the Bank of Indonesia in a complete, accurate, and timely manner according to the duration as specified in the regulation. Foreign debt that shall be reported as intended in PBI No. 12/2010 comprises principal foreign debt data and/or changes thereto and foreign debt data realization.

Based on Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crime ("**Law No. 8/2010**"), the reporting party[17] shall be obliged to apply the Know Service-User principle prescribed by every supervising and regulating institution.[18] The obligation to apply the Know Service-User principle shall be executed:[19]

a. When the reporting party has business relations with the service user;
b. If the value of rupiah and/or foreign currency-denominated financial transaction is minimally or equivalent to IDR 100,000,000 (one hundred million rupiah);
c. If there is a suspicious financial transaction related to money laundering crime and terrorism

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16 The reporting party shall mean the resident, who has foreign debt obligations to the non-resident (Article 1(2) of PBI No. 12/2010).

17 The reporting party shall mean anybody obliged by this law to submit a report to the Financial Transaction Reporting and Analysis Center ("***PPATK***") (Article 1(11) of Law No. 8/2010).
Article 17, paragraph 1 of Law No. 8/2010: the reporting party shall include: (a) financial service provider: bank, finance company, insurance firm and insurance broker, financial institution pension fund, securities company, investment manager, custodian, trustee agent postal agency as provider of *Giro* service's foreign currency trader, operator of card-based payment instrument, e-money and/or e-wallet organizer, cooperative executing credit union, pawn house, company operating futures commodity trading, or money delivery service provider; (b) goods and/or other service provider: property company/agent, automotive trader, jewelry/precious metal trader, artistic goods and antique trader, or auction center.

18 Article 18, paragraph 2 of Law No. 8/2010.

19 Article 18, paragraph 3 of Law No. 8/2010.

funding; or

d. If the reporting party doubts the truth of information reported by the service user.

The Financial Service Provider shall be obliged to submit a report to PPATK, covering (a) a suspicious financial transaction, (b) a cash financial transaction with the minimum amount of IDR 500,000,000 (five hundred million rupiah) or in a foreign currency with equivalent value, executed in one transaction or several transactions in one working day, and/or (c) a financial transaction constituting the transfer of funds from and to other countries.[20]

The providers of goods and/or other services as defined in Article 17 paragraph 1(b) of Law No. 8/2010 shall be obliged to submit a report on transactions executed by service users in rupiah and/or foreign currency with the minimum value or equivalent to IDR 500,000,000 (five hundred million rupiah) to PPATK.[21]

Moreover, anybody carrying cash money in rupiah and/or foreign currencies and/or other payment instrument in the form of check, promissory note, or Giro ticket for a minimum of IDR 100,000,000 (one hundred million rupiah) or with the value equivalent to the amount, into or outside the Indonesian Customs Area shall be obliged to notify it to the Directorate-General of Customs and Excise.[22]

8.2 Are there any restrictions on the amount of foreign currency that may be brought into or taken out of Indonesia?

Based on Law No. 24 of 1999 concerning Foreign Exchange Trading, any resident may freely hold and use a foreign exchange. However, the use of a foreign exchange for transactions in Indonesia shall be according to the provisions of the legal payment instrument as stated in the Law regarding the Bank of Indonesia. Further, the Bank of Indonesia is authorized to require any information or data regarding foreign exchange trading conducted by the resident.

Based on Bank Indonesia Regulation Number 4/2/PBI/2002 (the implementation regulation of Law No. 24/1999), companies engaged in foreign exchange trading are obligated to submit reports that contain information and data on foreign exchange activities to the Bank of Indonesia in a complete, accurate, and timely manner. The reports shall comprise the following:

1. Transactions not conducted through domestic banks or non-bank financial institutions, which

[20] Article 23, paragraph 1 of Law No. 8/2010.

[21] Article 27, paragraph 1 of Law No. 8/2010.

[22] Article 34, paragraph 1 of Law No. 8/2010.

affect its assets and/or offshore financial liabilities; and

2. The position of asset and or offshore financial liabilities as of the period ending report.

Such reporting obligation applies to the following companies:

1. Having total assets of no less than IDR 100,000,000,000 (one hundred billion rupiah), or
2. Having an annual sales turnover of no less than IDR 100,000,000,000 (one hundred billion rupiah).

Please also see the response to question number 8.1.

8.3 Are there any restrictions on the inflow or outflow of foreign exchange?

Please see the response to question numbers 8.1 and 8.2.

9. M&A

9.1 What are the various methods of mergers and acquisitions available to Indonesian companies?

Based on the Company Law, there are three types of business combination, namely merger, consolidation, and acquisition.

A merger is a legal act performed by one company or more to merge with another existing company, resulting in the assets and liabilities of the merging company being transferred by law to the absorbing company; subsequently, the legal entity status of the merging company is extinguished.[23]

A consolidation is a legal act performed by two or more companies to consolidate by establishing a new company, which by law acquires the assets and liabilities of the consolidating companies and the legal entity status of the consolidating companies is extinguished.[24]

An acquisition is a legal act performed by a legal entity or an individual person to acquire shares in a company resulting in the transfer of control in that company.[25] Based on that definition, the Company Law only recognizes the acquisition of shares. However, the provision of Article 102 of the Company

[23] Article 1(9) of the Company Law.

[24] Article 1(10) of the Company Law.

[25] Article 1(11) of the Company Law.

Law[26] may be used as the legal basis for the acquisition of assets, although this is not stated explicitly in the Company Law. In practice, there are various kinds of acquisition that may be conducted besides the acquisition of shares and assets.

The Company Law also recognizes the concept of segregation (spin-off). Based on the Company Law, segregation is a legal act performed by a company to segregate its business resulting in all the assets and liabilities of the company being transferred by law to two or more companies, or part of the assets and liabilities of the company being transferred by law to one or more companies.[27]

9.2 What is the process and timing for each method?

The Board of Directors ("**BOD**") of the companies planning to conduct merger, consolidation, acquisition, and segregation shall draw up a plan for merger, consolidation, acquisition, or segregation. After obtaining approval from the Board of Commissioners ("**BOC**") of each company, the merger, consolidation, acquisition, or segregation plan shall be submitted to the GMS for approval.

The BOD of a company planning to conduct a merger, consolidation, acquisition, or segregation shall publish their brief plan in at least one newspaper and announce it in writing to its employees at least 30 days before the summons to the GMS. The announcement shall also contain a notice that interested parties may obtain the merger, consolidation, acquisition, or segregation plan from the company's office from the date of the announcement until the date the GMS is held.

The creditor may submit objections to the company within a period of not more than 14 days after the above-mentioned publication. If the creditor's objection cannot be resolved by the BOD as of the date on which the GMS is convened, then the objection shall be voiced in the GMS in order to find a resolution. The merger, consolidation, acquisition, or segregation cannot be performed unless the objections are settled.

The merger, consolidation, acquisition, or segregation plan approved by the GMS shall be drawn up in a notary deed in Bahasa Indonesia. A copy of the company's deed of merger, consolidation, and acquisition shall be submitted to the Minister of Law and Human Rights for approval or notification.

If the merger, consolidation, acquisition, or segregation contains a foreign investment element, the BKPM's approval would be required.

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[26] Article 102 of the Company Law: "The Board of Directors shall obtain approval from the GMS to (a) transfer company assets, or (b) put up company assets as security for loan, which constitute more than 50% of the company's total assets in one or more related or unrelated transactions.

[27] Article 1(12) of the Company Law.

9.3 What are the criteria for determining which method is most suited to a particular case?

There is no specific regulation regarding this matter. However, in practice, consolidation is less common compared to merger and acquisition. One reason for this is that a consolidation creates a new company, which requires a new license, unlike in a merger or acquisition.

9.4 What are the additional requirements, if any, if one of the companies involved in the restructuring is listed on one or more of the stock exchanges in Indonesia?

If one of the companies involved is a listed company, then certain disclosure, shareholder approval, and Indonesia Capital Market and Financial Supervisory Agency ("**BAPEPAM**") approval would be required to complete these transactions.

9.5 What are the regulations restricting the acquisition of a certain percentage of shares in a company and when do compulsory takeover regulations apply?

The regulation prescribing the limitation on foreign share ownership is the PR 36/2010. However, the regulation is not applicable to indirect investment or a portfolio in which transactions are conducted through the Indonesian Capital Market to the extent that investors do not intend to acquire control of the companies.

If the acquisition is proposed to acquire control of a public company, the BAPEPAM Regulation Number IX.H.1 would be applicable, and the acquiring party shall submit a tender offer statement to BAPEPAM and the relevant stock exchange.

A tender offer is mandatory if an acquiring party acquires (i) a target company shareholding of more than 50% or (ii) an ability to determine, directly or indirectly, the management and/or policies of the target company.

The summary of the mandatory tender offer is as follows:

- The acquiring party shall publicly announce information concerning the acquisition no later than two working days after the acquisition has taken place.
- The acquiring party shall conduct a tender offer for all the remaining shares with some

exceptions.

- If the ownership of the acquiring party is more than 80% of the target company's paid-in capital, the acquiring party shall transfer the shares to the public so that the minimum public ownership is 20% and at least 300 persons own the shares within two years after the tender offer is completed.

In order to subscribe to more that 50% of the shares in a public company, a compulsory tender offer is needed.

9.6 Would the above forms of restructuring also be available to foreign companies?

The abovementioned business combinations are applicable to both a local company and a foreign investment company (PT PMA).

9.7 Is there any legislation or other form of regulation applicable that restricts the potential anti-competitive results of a sale or acquisition of a business or company within Indonesia?

If a company intends to conduct a merger or acquisition, it is also essential to implement the Business Competition Laws. Law No. 5 of 1999 regarding Prohibition of Monopolistic Practices and Business Competition prescribes that a business actor shall be prohibited from owning majority shares in several similar companies conducting business activities in the same field in the same relevant market, or prohibited from establishing several companies with the same business activities in the same relevant market, if the ownership has the following result:

a. one business actor or a group of business actors control more than 50% of the market share of a certain type of goods or services;
b. two or three business actors or group of business actors control more than 75% of the market share of a certain type of goods or services.

Aside from that, the Government Regulation No. 57 of 2010 regarding Merger or Consolidation and Acquisition of Company's Share that may Lead to Monopolistic and Unfair Business Competition ("**GR No. 57/2010**") prescribes that not all acquisition shall be notified to KPPU, but an acquisition that exceeds the following size-related criteria will need to be notified to the KPPU: (1) the parties' combined total asset value is IDR 2.5 trillion, and/or (2) the parties combined total sales value (turnover) is IDR 5 trillion.

GR No. 57/2010 has adopted the mandatory post-merger and acquisition notification to be given to the KPPU for a certain size of mergers and acquisitions within 30 days as of the merger date or the acquisition having legally taken place. If the business actor fails to notify the KPPU, the business actor shall receive an administrative fine of IDR 1 billion for each day of delay, with a maximum total fine of IDR 25 billion.

10. TAX

(Note: This Chapter 10 is not reviewed by lawyers or accountants certified to practice in Indonesia.)

10.1 What determines the extent of a company's liability to pay Indonesian income tax?

Worldwide income is taxable for any corporations established based on Indonesian law (resident corporation).
Indonesian domestic source income is taxable for foreign corporations that have Indonesian domestic source income but do not perform any business in Indonesia, and foreign corporations that have a permanent establishment (PE) in Indonesia (non-resident corporation).

A corporate taxpayer is a tax resident if incorporated or domiciled in Indonesia. A permanent establishment is used by an individual not residing in Indonesia or present in Indonesia.
Resident taxpayers (including resident employees) are taxed at a normal rate on taxable income, namely, worldwide gross income less allowable deductions (excluding non-taxable income and final tax income).

10.2 How is residence treated for tax purposes?

As stated above, any Corporations established based on Indonesian law are resident corporations, and their worldwide income is taxable.

10.3 What is the corporate tax rate and how is it applied?

After 2010, a 25% tax rate will be imposed on all corporate income. However, there are certain exceptions for listed companies and small companies.

10.4 What is the tax rate applicable to foreign companies on their income earned in Indonesia?

As stated above, Indonesian domestic source income is taxable for foreign corporations, and a 25% tax rate is imposed.

10.5 What other taxes are payable in Indonesia?

Value added tax, treasury tax, fixed asset tax, stamp tax, assignment tax, commodity tax, etc.

10.6 Is there a tax on dividends?

In principle, yes. This is excluded when certain requirements are met (subscription for 25% or more shares and so on).

10.7 Are payments subject to withholding tax?

Yes.
Salary, dividends, interest, service fees, imports, and payments from national treasury are subject to withholding tax.

10.8 Is capital gains tax payable in Indonesia?

Yes.

11. DISPUTE RESOLUTION

11.1 Please give a brief outline of the civil procedure in Indonesia.

Court of First Instance

Held at a District Court with the following stages of case examination (in case of a civil dispute):

a. Filing of complaint/lawsuit by the Plaintiff
b. Delivery of summons to the parties, with a copy of the lawsuit attached
c. Mediation process: a compulsory court-assisted mediation in order to settle the case amicably. If the mediation process fails, examination of the case shall continue.

d. Reading out the statement of claim/lawsuit by the plaintiff

e. Examination of the court's jurisdiction (if applicable): commences with the defendant's filing of demurrer on jurisdiction, plaintiff's response, and lastly, delivery of an interlocutory judgment on the court's competence to hear the case (jurisdiction). If the court decides that it has the competence, case examination shall continue.

f. The defendant submits a response on the merits of the case. The plaintiff shall then deliver a counterplea (*replik*) followed by the defendant's rejoinder (*duplik*).

g. Evidentiary stages: both parties submit evidence, which may consist of written evidence and presentation of witnesses (factual witness and expert witness).

h. Both parties submit conclusions.

i. Judgment

The whole process typically lasts for six months. Any party dissatisfied with the court's judgment may file an appeal to the High Court within 14 days after delivery of the judgment. If the 14 days has lapsed without any appeal, the judgment will be final and binding.

Appeals

There are no hearings in the appeal process. The party filing an appeal has the right to submit a memorandum of appeal, which may then be responded to by its opponent through a counter memorandum of appeal. Appeals are examined by the High Court, where it reviews the District Court judgment and dossiers, both on the legal facts and application of law. The appeal process generally takes six months to one year.

Cassation

Any party dissatisfied with the High Court's judgment may file a cassation to the Supreme Court within 14 days after it receives the High Court's judgment. The party filing an appeal shall submit a memorandum of cassation, which may then be responded to by its opponent through a counter memorandum of cassation. Just as in the High Court, there is no hearing in the Supreme Court examination. The Supreme Court will review the District Court judgment and dossiers only on the application of law. The cassation process generally takes six months to two years.

11.2 How are foreign judgments enforced in Indonesia?

The Indonesian courts have applied the principle of territorial sovereignty, which means that a judgment rendered outside the Indonesian territory cannot have any force and effect in Indonesia, unless execution treaties have been concluded between Indonesia and the other relevant foreign

states, as stated in Article 436 of the Regulation on Civil Procedure (*Burgerlijke Rechtsvordering*/"**RV**").

11.3 What are the alternative methods of dispute resolution available in Indonesia?

Mediation and arbitration are available.

The institute for alternative methods of dispute resolution is the Indonesian National Board of Arbitration (BANI).

The term of mediation must be 40 days from the day the Mediator was appointed by the parties or the panel of judges. Subject to both parties approval, the mediation process can be prolonged/extended for a maximum of 14 working days after the 40 days' time limit has lapsed.

The term of arbitration must be 180 days from the appointment of the arbitrator, unless otherwise agreed by the parties and the arbitrator or arbitral tribunal.

11.4 How are arbitral awards enforced in Indonesia?

Within 30 days from the date the arbitration decision is rendered, the arbitrator or his/her proxy must submit and register an original decision or authentic copy thereof with the District Court Clerk with jurisdiction over residence. The execution order must be ordered within 30 days from receiving the petition for execution order.

An international arbitration award may only be executed in Indonesia after obtaining an execution order from the Central Jakarta District Court.

11.5 What are the grounds on which an arbitration award can be challenged in the courts in Indonesia?

Parties are entitled to submit request for cancellation of arbitration decision if the decision is alleged to contain the following elements:

1. Letters or documents submitted in review are admitted or stated to be false following an arbitration decision being rendered.
2. Following an arbitration decision being rendered, documents of a decisive nature are found to have been hidden by the party.
3. Decision arises from the deceit of one of the parties.

The request of cancellation of arbitration must be made in writing during a period not exceeding 30

days following the date of delivery and registration of arbitration dec0Hision to the District Court Clerk with jurisdiction over the residence of the respondent.

(END)

Note: Please note that (a) laws and regulations in Indonesia can be frequently amended, and (b) the intricacies of procedure may vary in practice, as procedure is a realm subject to administrative discretion; therefore, sole reliance on the report is not advisable when making important decisions. We would advise that interested clients should, through Nishimura & Asahi, contact us before choosing any particular course of action.

(as of September 30, 2011)