INDONESIA
Legal Provisions

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GENERAL REMARKS

The current Indonesian law is only partially codified. Old customary law, religious law, old Dutch and later Indonesian law exist side by side. In Indonesia, civil, religious, military and administrative courts exist simultaneously. Of importance are the district court (*Pengadilan Negeri*), high court (*Pengadilan Tinggi*) and supreme court (*Mahkamah Agung*) where civil disputes and criminal cases are judged. In addition there is the commercial court which deals with bankruptcy and with intellectual property right matters.

The jurisdiction depends on the residence of the defendant or the place of offence. In all cases the district court (*Pengadilan Negeri*) receives evidence and hears testimony. The higher courts (high and supreme court) decide on procedural errors. Since 1977 it is possible to bring trade disputes before an arbitration panel (Indonesian National Board of Arbitration). In a commercial dispute, extra-judicial arbitration or out of court-settlement are more likely to succeed.

CUSTOMS

Indonesia is a member of the World Trade Organization and adopts the Harmonized System Code for Customs Tariff. Import duties generally vary between 0% and 100%. Some equipment may incur tariffs of up to 225%. The tariffs are calculated based on the CFR or CIF value, net of the specific weight or volume-averages.

For the calculation of import tariff, the CIF value serves as the basis for this assessment, provided that the insurance with a foreign insurance company has been completed.

For import tariff, the following links could be use:
http://www.beacukai.go.id/?page=apps/browse-tarif-dan-lartas.html

Indonesia and other ASEAN countries are implementing National Single Windows system which actually expedites the pre-clearance and custom clearance process (http://www.insw.go.id/website/)

IMPORT AND EXPORT REGULATIONS

Import

Imported goods may be subject to import duty, sales tax, luxury and income tax. Companies may only import with an import license issued by the Ministry of Trade. Import of goods without a license for non-commercial purposes may be permitted only with special permission from the Ministry. Companies without import license may appoint an importing representative.

The import licensing requirement is exempted for the import of goods of which values do not exceed US$ 100, and goods from the "master list" of approved investments. These include goods which cannot be produced in Indonesia or expensive capital goods (machinery), equipment, raw materials and consumer goods. The inclusion of goods into the "master list" is done on request at the Indonesian Investment Coordinating Board BKPM. Thanks to this facility, import tariff savings of 50% to 100% can be achieved. Import of goods as gift items to the Indonesian government and recognized non-profit organizations, samples, advertising material, as well as imports of warehousing (bonded ware-houses) are also exempt from the licensing requirement.

Temporary import

Indonesia is not a member of the ATA Convention. For temporary import of goods, the Indonesian importer must sign an undertaking with the competent customs office and provide a reclaimable guarantee equivalent to the amount of the good with customs and tax duties factored in. This is not necessary when participating in exhibitions because larger fair warehousing (bonded warehouse) would declare the goods.

Exports

The export of ramin timber, certain fish species, certain varieties of rice, certain categories of rubber, and culturally valuable antiques is prohibited. Special licenses are required for the export of products such as gold, silver, certain categories of rubber, certain types of fish, oil and natural gas. Exports of certain goods are also quantitatively and qualitatively restricted or liable for export taxes.

CURRENCY REGULATIONS

The transfer of foreign currency to abroad is allowed at any time. The export of local currency abroad, however, is prohibited.

REGISTRATION PROCEDURE FOR PRODUCTS

Different products would require registration with different government agencies. For example. pharmaceuticals and medical devices can be distributed only after the issue of registration numbers by the Ministry of Health. It is recommended that product registration to be done through local experts or counterpart in Indonesia.

STANDARDS, TECHNICAL RULES, LABELLING REGULATIONS

Standards

Indonesia is applying its own national standard called SNI (Standard National Indonesia) which applies for certain products that are produced locally or imported. Relevant technical institutions or agency could impose a mandatory SNI for products that relate to safety, public health, environment, and/ or with economic considerations. Examples of products that are mandatory for SNI are: toys for kids, tires, cement, bottled drinking water, helmet, etc. SNI is issued by Badan Standardisasi Nasional (National Standardization Agency of Indonesia), http://www.bsn.go.id/

Labelling[1]

Labelling is required for Food and Non-Food Products.

- Food Law No.18/2012, Government Regulation No.69 of 1999 on Food Labelling and Advertisement, BPOM Regulation No. HK.00.05.52.4321 of 2003 on Guidelines of Labelling of Food Products require all producers, importers and/or distributors of food products to attach labels on food products before entering Indonesia customs area.
- Minister of Trade regulation no. 22/2010 require producers and importers to attach labels written in Bahasa Indonesia on non-food products before entering Indonesia customs area.

The recent regulation no.67/2013 describe the recent development on labelling that would need to be complied by domestic and foreign companies.

Pre-shipment inspection

Pre-shipment inspection is required for over 800 products, based on the Ministry of Trade Regulation no.61/2013. Companies need to check the list of seaports and airports for entrance of certain kind of products in the list of pre-shipment inspections. Exemptions are also applied for certain condition of importation.

[1] Source: Eurocham Indonesia

Halal Regulation for Food Products

The Halal Law was proposed by the previous Government and passed by the Parliament on 25 September 2014. The law was issued on 17 October 2014. Corresponding institutions that proposed the law are the Ministry of Religious Affairs and Indonesian Ulama Council (MUI).

The Law consists of 68 articles and emphasizes “products that enter, circulate, and traded in the territory of Indonesia shall be certified halal”. Under this law, the government has the obligation to provide legal certainty for a product that is proven halal (Halal Product Guarantee) with halal certificate. To operationalize this Halal Product Guarantee, a new institution called Badan Penyelenggara Jaminan Produk Halal (BPJPH) or Security Agency for Halal Products shall be established within 3 years after the issuance of this law and implementing regulation should be ready within 2 years after the issuance of the law.

TAXES

Indonesia imposes a range of taxes on individuals and corporate taxpayers. These are summarized below:

- Income Tax, which includes:
    a) Corporate Income Tax;
    b) Individual Income Tax;
    c) Withholding Tax on employees’ remuneration;
    d) Withholding Tax on various payments to third parties.
- Value Added Tax (VAT) and Luxury Goods Sales Tax (LGST), subject to certain criteria.

A good reference for Taxes applied in Indonesia could be seen at the following URL: http://www.pwc.com.au/asia-practice/indonesia/assets/publications/Indonesian-Pocket-Tax-Book-2014.pdf

COMMERCIAL LAW

Indonesia’s parliament on 11th February 2014 passed into law the country’s first over-arching trade bill in a move that provides the government with the legislative foundation from which to exert greater control over exports and imports. The new trade law (UU no.7, 2014) could be seen in the following link: http://www.kemendag.go.id/files/regulasi/2014/03/11/7-tahun-2014-id-1398758805.pdf)

SETTING UP COMPANIES

In order to carry out business activities in Indonesia, the company is required to be incorporated as a limited liability company in Indonesia. This process is handled by the Indonesia Coordinating Board for Investment (BKPM, http://www4.bkpm.go.id/) for business areas that do not require a special license.

Certain business areas require a foreign company to establish a local partner and are allowed up to a certain percentage of ownership depending on the sector. The specifics of this are covered in the Negative Investment List (See Presidential Decree No.39/2014 Negative Investment List, http://www.bkpm.go.id/img/file/Peraturan/PP%2039_2014%20Full.pdf).

When choosing which business type to operate under, investors also need to think about whether using a local partner would be more effective in penetrating the local market. For example, selling a product that requires a direct customer distribution channel may benefit from the local knowledge and connections of an Indonesian partner.

Indonesian Coordinating Board on Investment (BKPM) launched a one-stop-service in January 2015. The new one-stop integrated service is expected to simplify investment licensing procedures and improve ease of doing business which in turn could bolster economic growth. With the new service, the Indonesian Coordinating Board for Investment (BKPM) has taken over 134 permits from 22 ministries and institutions. These permits include some of those that have often been stumbling blocks for investment, such as land-use permits and environmental impact analysis permits from the Environment and Forestry Ministry. The service will covers 1,198 business sectors, excluding finance and oil and gas. Registration for business license could now be done on-line http://online-spipise.bkpm.go.id/ .

JOINT VENTURE OPPORTUNITIES[2]

This is the most common form of entry into the market given the limitations on foreign ownership. This methods provides access to the partners distribution network and makes navigating through bureaucracy and other cultural hurdles easier. Finding a local partner with which one can 'fit' and share the same vision with is more of a challenge. It requires foreign investors to come to the table with a compromising and flexible attitude towards the business culture.

Joint Ventures are particularly useful when engaging in an area that involves production as well as distribution to overcome the bottlenecks in transportation and bureaucratic customs procedures.

PROMOTION OF INVESTMENT

Promotion of Investment is under the purview of the Indonesian Coordinating Board for Investment ("BKPM"). Guidelines and Procedures for Capital Investment Licensing and Non-Licensing Services ("Perka BKPM No.5/2013") could be seen at the following link:
http://www4.bkpm.go.id/contents/p13/APPLICABLE+LAWS++REGULATIONS/13/11

In general, Perka BKPM No.5/2013 has the following provisions, among others: (i) minimum investment for foreign capital (PMA) must be higher than IDR10 billion or the equivalent nominal value in USD; (ii) a simplification of licensing procedures in that it removes the Capital Investment Registration Permit (Izin Pendaftaran Penanaman Modal) so that the investor can directly file an

[2] World Bank Doing Business Report 2011, http://www.gbgindonesia.com/en/main/business_guide/setting_up_a_business_in_indonesia.php

application for a Principle License (Izin Prinsip) after fulfilling the specific requirements; (iii) the use of domestically produced and/or imported machineries; (iv) a 2 year validity period for import duty facilities for the import of machinery/equipment, which can then be extended annually in accordance with the project completion period as specified in the Principle License.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

A Business Visa is usually granted to business travellers for up to 60 days (single entry), or 3 months (multiple entry), however this is discretionary and can vary depending on country of origin and the purpose of the visit. See: http://www.indonesia-bern.org/blog/?page_id=321

Overview of Work Permit Applications[3]

1. RPTKA (Expatriate Placement Plan) Application

The sponsoring Indonesian company must submit an Expatriate Placement Plan to apply for permission to employ foreign assignees, detailing the number of assignees to be employed, job descriptions and work locations on the application.

2. TA-01 Application

Once the RPTKA has been approved, the sponsoring company will need to apply for a TA-01 from the Indonesian Immigration Office, which is a recommendation for the assignee to be granted a temporary residence visa.

3. VITAS / VBS (Temporary Resident Visa) Initial Approval

The sponsoring company must apply for approval for a VITAS – Temporary Resident Visa – from the immigration Office, on behalf of the foreign assignee and any accompanying dependants.

4. Visa Application at Indonesian Embassy

Once the VITAS is approved, the Immigration Office will send a telex approval to the appropriate Indonesian Embassy/Consulate, where the assignee and any accompanying dependants will have to apply for their temporary resident visas. When the applications have been successfully completed, the VITAS / VBS visa will be stamped into their passports. The VBS visa stamp allows entry into Indonesia, and will be valid for 90 days.

5. Work Permit Application

Once entry to Indonesia has been approved, the fee for the work permit must be paid, and the work permit application filed.

6. Post Arrival KITAS and MERP

KITAS (Temporary Residence) Cards must be applied for by the foreign assignee and any accompanying dependants once they have arrived in Indonesia. The assignee will then be able to apply for Multiple Exit Re-entry Permits (MERPs).

Other steps will need to be taken, such as registration at the local immigration office and fingerprinting.

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[3] http://www.newlandchase.com/country/indonesia_immigration_visa_work_permit

PROCEDURES FOR COLLECTING PAYMENT[4]

In Indonesia, non-residents are normally subject to a 20% withholding tax on the remittance of interest, dividends, royalties and other payments outside the country. Double tax treaties offer a lower withholding tax rate, usually 10% to 15%. In addition, most treaties provide for an exemption from withholding tax, where interest is paid to the government or other specified authorities in other countries. The treaties also provide a "time test" for determining when a permanent establishment is deemed to exist. Indonesia and Switzerland has a tax treaty signed in 1990: http://www.treatypro.com/treaty_tables/switzerland.asp

SOURCES OF INFORMATION AND LINKS

- Ministry of Trade: http://www.kemendag.go.id/en
- Indonesia Investment Coordinating Board: http://www4.bkpm.go.id
- Import procedures and Tariffs: http://www.beacukai.go.id/?page=apps/browse-tarif-dan-lartas.html
- PWC Indonesian Pocket Tax Book 2014
- Taxation and Investment in Indonesia 2014: https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-indonesiaguide-2014.pdf
- National Standardization Agency of Indonesia: http://www.bsn.go.id/
- Working Permit: http://www.newlandchase.com/country/indonesia_immigration_visa_work_permit
- Global Business Guide Indonesia: http://www.gbgindonesia.com/
- Doing Business in Indonesia (World Bank): http://www.doingbusiness.org/law-library/indonesia
- Indonesia National Single Window: http://www.insw.go.id/website/

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[4] https://www.kpmg.com/ID/en/IssuesAndInsights/ArticlesPublications/TaxNewsFlash/Documents/TaxNewsFlash-November-2011.pdf