

INDONESIA

Legal Provisions

Compiled by: Cynthia Kemalawati

Swiss Business Hub Indonesia

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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. 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>

IMPORT AND EXPORT REGULATIONS

Tariff Classification and Import/Export Duties

Indonesia adopts the Harmonised System (HS) and custom duties are levied on both imports and exports. Imports are also subject to VAT and/or STLG.

Import Duties

Committed to trade liberalisation, the Indonesian government has progressively cut import duty rates on most products. Based on its Customs Law, the maximum import duty in Indonesia is 40%. However, most imported items attract duties in the range of 0% to 15%. The rates applicable vary with where the goods are originated, where certificate of origins need to be presented. Rates are put into three categories:

- Special preferential rates – applicable if there is a special preferential trade agreement (e.g. ASEAN member states). Under the ASEAN FTA, duties on imports from ASEAN countries generally range from 0% to 5% and the aim is to reduce duty rates between ASEAN countries to 0%.

- Preferential rates – applicable if the country has a Most Favoured Nation (MFN) status with Indonesia. In 2014, Indonesia's average MFN applied tariff was 6.9% (World Trade Organisation, 2016).

- Ordinary rates – for any other country

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.

Indonesia Regulation for Import Shipments Through Courier Service Companies (Regulation PMK 182/PMK.04/2016)

A new import regulation, PMK 182/PMK.04/2016, was rolled out in Indonesia in January 2017. The full implementation of the new regulation at the Customs and Excise Office in Soekarno-Hatta International Airport, Cengkareng, is scheduled on 27th April 2017.

The key changes introduced by the new regulation are as follows:

1. There are now 3 clearance classifications, based on the value of the shipment:
 - a. Shipments with values not exceeding USD 100;
 - b. Shipments with values more than USD 100 but not exceeding USD 1,500; and
 - c. Shipments with values more than USD 1,500.
2. Limitation of the exemption value of goods (de minimis) will change from USD 50 to USD 100. If a shipment's value is greater than USD 100, duty tax will be applied to the full value of the shipment;
3. Shipments with a value more than USD 100 but not exceeding USD 1,500 can be processed using one of the following methods:
 - a. Consignment Note with flat 7.5% import duty (except for textbooks, which attract a 0% import duty); or
 - b. Formal entry (PIB) for business entities or simplified formal entry (PIBK) for personal shipments.
4. Shipments with a value more than USD 1,500 can be processed using PIB for business entities or PIBK for personal shipments.

CURRENCY REGULATIONS

Bank Indonesia Regulation No. 17/3/PBI/2015 regarding the Mandatory Use of the Rupiah in Indonesia (henceforth BI Regulation No. 17) requires the use of the rupiah in cash and non-cash transactions (for example check, giro order, credit card, debit card, ATM card or electronic money) conducted within the territory of Indonesia. This involves:

- Transactions conducted in Indonesia for the purpose of a payment;
- Transactions conducted in Indonesia for the settlement of other obligations that must be fulfilled with money; and/or
- Other financial transactions conducted in Indonesia.

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 BPOM (National Agency of Drugs and Food Controls). 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/>

Labelling¹

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.

¹ Source: Eurocham Indonesia
Switzerland Global Enterprise – Legal Provisions
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- 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.

Halal Law

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.

Some important points from the implementing regulation draft as follow:

- **Non-halal products:** There is no obligation to Halal certified. However, it will need to put non-halal notification in the form: image, sign, and/or written.
- **Products needs to be halal certified:**
 - Goods (foods, beverages, medicines, cosmetics, chemical products, biological products, genetically modified product, and other products worn, used, or utilized by people)
 - Services (slaughtering, processing, storage, packaging, distribution, selling, and serving).
- **Stages of Halal Certification on Types of Products is based on following consideration:**
 - Already established in another legislation;
 - Has been halal certified before Law No. 33/2014 applies;
 - Primary needs and massively consumed;
 - Has a high critical point non-halal;
 - Readiness from the businesses; and/or
 - Readiness of the supporting infrastructure.

- **Stages for kinds of products to be halal certify:**
- Food and Beverages à Year 1 - Year 3 after the date of the enforcement of this Government Regulation
- Medicines, cosmetics, chemical products, biological products, genetically modified product, and other products worn, used, or utilized by people à Year 1 - Year 5 after the date of the enforcement of this Government Regulation.
- **Exemption clause:**
Medicines, biological products, and medical devices that are life-saving, which use non-halal raw material and/or does not meet halal process, still can be distributed and traded until its halal substitution is found. (Source : Eurocham).

However, Up to date, the draft implementing regulation is still being discussed, and it is still not clear when it will be issued. At this stage, many companies are taking a wait-and-see approach and doing collective lobbying efforts in discussions with the government.

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:

<https://www.pwc.com/id/en/pocket-tax-book/english/ptb-2017.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

- PMA - Limited liability company (*Perseroan Terbatas* (PT) with foreign ownership

The most common option for an overseas company as a foreign investor to establish a presence in Indonesia is by setting up a limited liability company (*Perseroan Terbatas* (PT)) with foreign ownership (PT PMA). The first step in establishing a PT PMA is to determine whether the PT PMA can be wholly foreign owned or only partially foreign owned. This involves what is known as the Negative

Investment List. The current Negative Investment List is contained in Presidential [Regulation No. 44 of 2016](#) outlining the list of business fields that are closed and business fields that are open with requirements for investment

https://www3.bkpm.go.id/images/uploads/prosedur_investasi/file_upload/Perpres_44_2016.pdf

For the establishment of a PT PMA, the foreign investor needs to comply with minimum capital requirements for foreign investment. Currently the minimum requirement stands at IDR 10 billion or the equivalent value in US dollars. The Indonesian government set a high requirement in order to attract large scale companies and investors, while protecting smaller sized local businesses.

Paid up capital is generally set at 25 percent of the minimum capital requirement (hence IDR 2.5 billion).

- Foreign Company Trade Representative Office (KP3A)

With this type of entity, the company is not allowed to carry out any trading activities and sales transaction such as submitting tenders, signing contract, settling claims etc.

The functionality of KP3A is limited to:

- Introduce, promote and market the goods produce by a parent company
- Conduct market research and surveillance for domestic sales of goods produce by a parent company
- Conduct market research on items required by parent company abroad as well as providing information about the terms of the export of goods to companies in Indonesia
- Closing contract for and on behalf of the company that is appointed by the parent company in Indonesia for export of goods.

This type of company does not need to comply a minimum capital of IDR 10 billion.

Online single submission

As part of the Indonesian Government's commitment to improve the ease of doing business in Indonesia, the Government has implemented new integrated electronic system of licensing application through online single submission ("OSS"). As explained by the Chairman of BKPM, under this new

system, all licensing application authority will be transferred from BKPM to Coordinating Ministry of Economic Affairs (CMEA). This transfer of authority is further regulated under new Government Regulation 24/2018 which has just recently been issued.

With the establishment of the Online Single Submission framework (issuance of PP 24/2018), Coordinating Ministry of Economic Affairs will handle all types of business licenses effective from 29 June 2018. BKPM will still receive license application; however, BKPM will not be able to process / handle the licensing procedures for businesses.

Transfer of power notwithstanding, BKPM informed that there are several licenses that are still preserved under BKPM authority, even after PP 24/2018 is issued. However, it is unclear on which licenses that will remain at BKPM table. BKPM is also preparing itself to take over the OSS system from the CMEA, expected to be five months from 29 June 2018.

Once the OSS system is launched, BKPM will distribute all the applications to the OSS. As of today, the official website of the OSS (www.oss.go.id) cannot be accessed by the public, due to the fact that it is still under construction.

For background information, President Jokowi has issued Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services ("PP 24/2018").

PP 24/2018 aims to accelerate and improve investment and businesses. To achieve this objective, this regulation establishes electronic integrated business licensing services system, called the Online Single Submission (OSS). At the moment the OSS system will be run by the Coordinating Ministry for Economic Affairs, which will be later transferred to the BKPM.

Under PP 24/2018, OSS will handle various licenses, including business licenses, or commercial or operational licenses, of various sectors, including electricity, healthcare, drugs and food, financial services, trade and employment.

<http://bahar.co.id/whats-new/whats-new/online-single-submission-transition-licensing-application-one-stop-services>

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

Holders of national passport issued by 169 countries or special regions as listed below do not require visa for traveling to Indonesia and to stay for not more than 30 days. The terms and conditions of the visa exemption are as follow:

1. The visa exemption is only valid for tourism, family visit, social visit, art & cultural activity, official government visit, giving lecture or attending seminar, attending meeting held by head office or representative office in Indonesia, attending international exhibition, and transiting to continue journey to other country.
2. The allowed duration of stay of the visit is 30 days maximum and cannot be extended nor be upgraded into other type of stay permit.
3. The visa exemption is only valid if travelers enter and exit Indonesia through designated Immigration Checkpoints as listed below.
4. Travelers' passport must be valid at least 6 months upon the date of arrival in Indonesia

5. Travelers must have round-trip ticket.
6. Holders of an emergency or temporary passport are not eligible for the exemption.

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.

The Process of Getting a Work Permit in Indonesia

Before getting your work permit in Indonesia (IMTA) you need to follow through these steps:

	A document approving your company's proposal to use foreign manpower. Issued by the Indonesian Ministry of Manpower.
1. Foreign Manpower Employment Plan approval (RPTKA)	[Update: <i>Presidential Regulation No. 20/2018</i>] RPTKA is not required for companies applying for the working permit approval. As well as for shareholders who are also the Director and Commissioner of the Company.
2. Pre-IMTA/Pre-working permit	This process replaces the TA-01 procedure for working visa. During the process, you learn about how long you can stay in Indonesia for your work.
3. Payment of the monthly development funds to the Indonesian Ministry of Manpower (DKP-TKA)	The amount your company should pay comes from your length of stay. You receive notification about it during the previous procedure. The charge for the DKP-TKA is at \$US 100/month and paying in advance is a must. E.g. \$US 600 for a 6-month working period and \$US 1,200 for a 12-month working period.
4. Working permit (IMTA)	You can now legally work in Indonesia.
5. Limited stay permit (VITAS)	Your IMTA will be the basis of the Indonesian Immigration to issue you the Limited stay permit/ VITAS. The validity of your VITAS will adjust to the maximum duration of stay granted for your position. Calculation starts from the day you enter Indonesia. VITAS approval takes place at the immigration in Indonesia. Also, note that the issuance of VITAS itself takes place abroad. You must visit an Indonesian embassy of your choice.
6. Limited stay permit (ITAS)	As soon as you enter Indonesia with a VITAS, you must convert it into KITAS, valid for as long as your VITAS is. During this process you will also have to go to the Immigration office to record your biometric data.

With this document, you can exit and re-enter Indonesia with the same limited stay permit. It is valid as long as your KITAS is.

[Update: *Presidential Regulation No. 20/2018*]

7. MERP / Multiple entry and Re-entry Permit - You can do the application of VITAS and ITAS in the same time at the Indonesian embassy abroad. Thus, when the VITAS approval is being converted, foreign worker will also get the ITAS and MERP in the passport.

Although, note that this is a new regulation and may not have been put into practice yet in all areas.

8. Civil registration - Family card, temporary residential card, various documents required for living in Indonesia.

Source : <https://emerhub.com/indonesia/2015-new-work-permit-regulations-indonesia/>

PROCEDURES FOR COLLECTING PAYMENT²

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

² <https://www.kpmg.com/ID/en/IssuesAndInsights/ArticlesPublications/TaxNewsFlash/Documents/TaxNewsFlash-November-2011.pdf>

SOURCES OF INFORMATION AND LINKS

- Ministry of Trade: <http://www.kemendag.go.id/en>
- Indonesia Investment Coordinating Board: <https://www.bkpm.go.id>
- Import procedures and Tariffs: <http://www.beacukai.go.id/?page=apps/browse-tarif-dan-lartas.html>
- Taxation and Investment in Indonesia : <https://www.pwc.com/id/en/pocket-tax-book/english/ptb-2017.pdf>
- National Standardization Agency of Indonesia: <http://www.bsn.go.id/>
- Visa : <https://www.kemlu.go.id/bern/en/default.aspx>
- Working Permit: <https://emerhub.com/indonesia/2015-new-work-permit-regulations-indonesia/>
- Global Business Guide Indonesia: <http://www.gbgindonesia.com/>
- Doing Business in Indonesia (World Bank): <http://www.doingbusiness.org/law-library/indonesia>
- Online Single Submission : <http://bahar.co.id/whats-new/whats-new/online-single-submission-transition-licensing-application-one-stop-services>
- Setting up a company :
https://www3.bkpm.go.id/images/uploads/prosedur_investasi/file_upload/Perpres_44_2016.pdf

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Author: Cynthia Kemalawati
Senior Trade Officer

Author's address: Embassy of Switzerland
Jl. H.R. Rasuna Said Blok X 3/2
Jakarta 12950
Indonesia
Tel +62 21 525 60 61 ext. 850268
Fax +62 21 520 22 89
E-mail : cynthia.kemalawati@eda.admin.ch
Internet: www.eda.admin.ch/jakarta