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2022 INVESTMENT POLICY AND REGULATORY REVIEW

Indonesia

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS 2

GLOSSARY 3

1. INTRODUCTION 5

2. OVERVIEW OF INVESTMENT POLICY FRAMEWORK 7

A. Domestic Legal Instruments Regulating Foreign Investment 7

B. International Legal Instruments Regulating Foreign Investment 8

C. Key Institutions for Investment Promotion 12

D. Foreign Investment Promotion Strategy 14

3. INVESTMENT ENTRY AND ESTABLISHMENT 15

4. INVESTMENT PROTECTION 24

5. INVESTMENT INCENTIVES 28

6. INVESTMENT LINKAGES 31

7. OUTWARD FOREIGN DIRECT INVESTMENT 31

8. RESPONSIBLE INVESTMENT 31

9. CITY SPECIFIC REVIEW—JAKARTA 33

10. FDI IN THE DIGITAL ECONOMY 34

ENDNOTES 43

LIST OF REFERENCE MATERIALS 45

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GLOSSARY

ACIA	ASEAN Comprehensive Investment Agreement
ASEAN	Association of Southeast Asian Nations
BI	Bank Indonesia
BKPM	Investment Coordinating Board
CPC	Central Product Classification
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSR	Corporate Social Responsibility
DKI	Special Capital Region (of Jakarta)
DTAA	Double Taxation Avoidance Agreements
FDI	Foreign Direct Investment
FET	Fair and Equitable Treatment
FIE	Foreign-Invested Enterprise
GATS	General Agreement on Trade in Services
GPGG	General Principle of Good Governance
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
IIPC	Indonesia Investment Promotion Centre
IPR	Intellectual Property Rights
IPRR	Investment Policy and Regulatory Review
ISDS	Investor-State Dispute Settlement
JDIH	National Documentation Network and Legal Information
KBLI	Indonesian Business Classification Codes
MFN	Most-Favored-Nation
MOF	Ministry of Finance
MoHA	Ministry of Home Affairs
MP3EI	Masterplan for Acceleration and Expansion of Indonesia's Economic Development

NIB	Business Identity Number
OFDI	Outward Foreign Direct Investment
OSS	Online Single Submission
PKLN	Offshore Commercial Loan Coordinating Team
PMA	Foreign Capital Cultivation Company
PPIR	Prudential Principles Implementation Reports
RCEP	Regional Comprehensive Economic Partnership Agreement
Rp	Rupiah (currency)
RPJMN	National Medium Term Development Plan
RPJPN	National Long Term Development Plan
RPTKA	Expatriate Manpower Utilization Plan
SCM	Agreement on Subsidies and Countervailing Measures
SNI	Indonesian National Standard
SOE	State-Owned Enterprises
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
VAT	Value-Added Tax
WTO	World Trade Organization

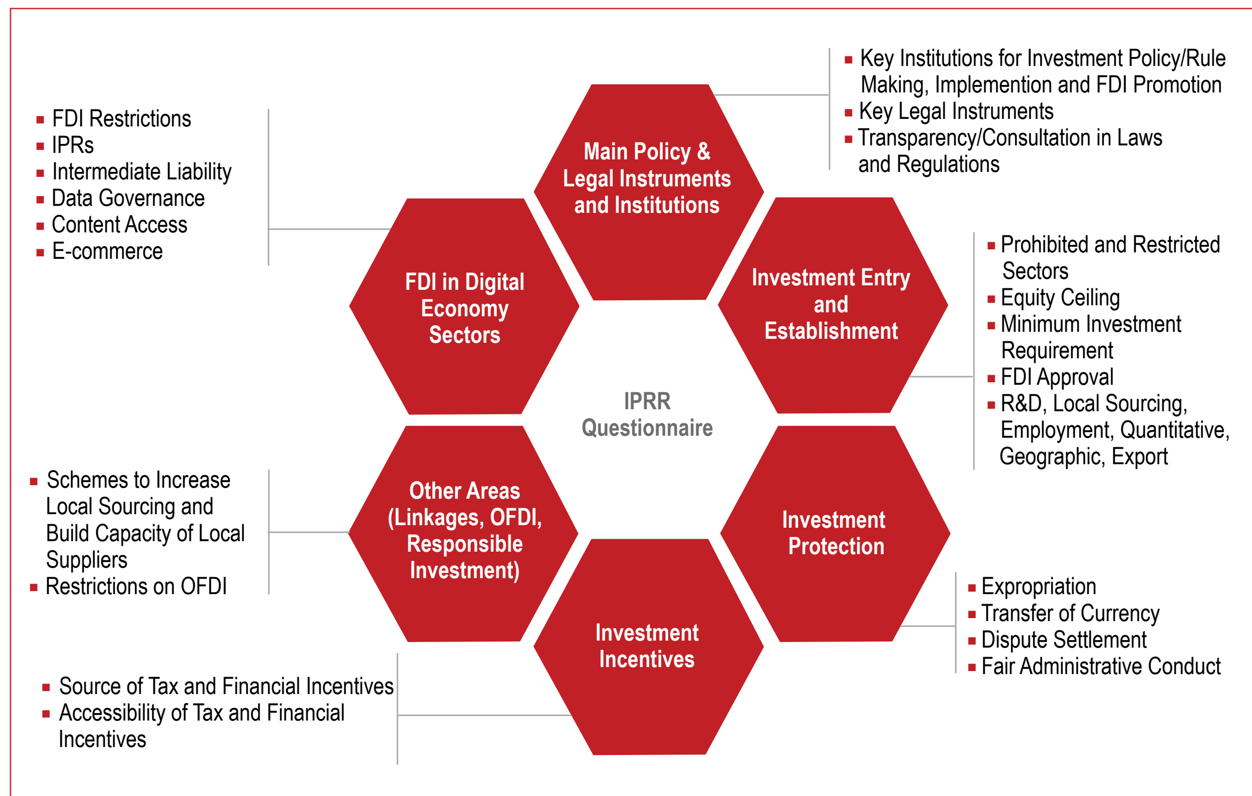
1. INTRODUCTION

This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) in Indonesia. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of **December 31, 2021**, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries (MICs): Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

The research for preparing this IPRR was undertaken by the international law firm Kilpatrick Townsend & Stockton LLP, in collaboration with a local law firm, under the supervision of the World Bank Group. The research was primarily based on a review of currently applicable policies, laws and regulations. In some cases, consultations with regulators were conducted to collect up to date information.

The research was guided by a standardized questionnaire, covering a limited set of topics, including foreign investment entry, establishment, protection and select dimensions of FDI in the digital economy. The questionnaire focused on de jure frameworks as generally applicable to a foreign investor, not located in any specialized or preferential regime (such as special economic zones). It primarily focused on national, economy-wide (rather than sector-specific) laws and regulations. For the purpose of the research, it was assumed that the foreign investor is a private multinational company with no equity interest or management control by the government of its home country (that is, not state-owned enterprise).

Figure 1. Overview of Topics Covered in IPRR



There are aspects that this IPRR does not cover. It is not a comprehensive review of the entire legal and regulatory framework affecting investment. Information presented is not exhaustive, but illustrative of the main topics and issues covered (for example, it does not exhaustively list all available tax and financial incentives in the country). It does not present recommendations on reform areas. Notably, it does not capture de facto implementation of laws and regulations in the country. Given these limitations, information presented in this IPRR should be interpreted and used while keeping in view the overall country context and realities. Further, it contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed legal research.

This IPRR is organized as follows:

- Section 2 provides an overview of the country's investment policy framework, including the legal instruments regulating foreign investment, key institutions involved in investment promotion, as well as the country's foreign investment promotion strategy; it also delineates the country's international investment legal framework, including the country's commitments under the World Trade Organization (WTO) and select international investment agreements (IIAs);
- Sections 3-6 cover the country's policies and domestic legal framework concerning different dimensions of the lifecycle of an investment: entry and establishment (Section 3), protection (4), incentives (5) and linkages (6);
- Sections 7 and 8 explore emerging investment policy and regulatory areas — Section 7 considers outward FDI and Section 8 responsible investment;
- Section 9 focuses on city-specific investment policy and regulatory measures in the largest commercial center; and
- Section 10 covers FDI in the digital economy.

2. OVERVIEW OF INVESTMENT POLICY FRAMEWORK

A. Domestic Legal Instruments Regulating Foreign Investment

FDI Law and Regulation

The primary law regulating foreign investment and the inflow and outflow of foreign capital in Indonesia is Law No. 25 of 2007 on Capital Investment (as amended by Law No. 11 of 2020 on Job Creation). The primary regulations are the Presidential Regulation No. 10 of 2021 on Investment Business Sectors (as amended by Presidential Regulation No. 49 of 2021) and the Investment Coordinating Board (BKPM) Regulation No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing (BKPM Regulation No. 4 of 2021). The law and the regulations apply equally to domestic investment.

In October 2020, Law no. 11 of 2020 on Job Creation ("2020 Law on Job Creation") was passed introducing amendments to 79 existing laws in order to reduce bureaucracy and stimulate investment in a post-pandemic economy. This includes easing restrictions on foreign investment activities to promote ease of doing business with the ultimate goal of attracting foreign investors to Indonesia to create more jobs for Indonesian people. The implementing regulations for the 2020 Law on Job Creation introduce, among other changes, a risk-based approach for business licensing, tax reforms, and more flexible labor regulations, and significantly liberalize foreign investment by revoking the 2016 Negative List of Investment, replacing it with a new Investment List under the Presidential Regulation No. 10 of 2021 with fewer restrictions, which came into effect in March 2021.

The Law No. 25 of 2007 provides for non-discrimination (national treatment and most-favored treatment), as well as for the principles of certainty, openness, impartial efficiency, sustainability, business security, and accountability as they pertain to implementing capital investment in the country. It defines "capital investment" as all forms of capital investing activity both by domestic and foreign investors (who may be a foreign individual, enterprise or government) to undertake business within the territory of Indonesia. "Foreign investment" is defined as investment activity to conduct business in the territory of Indonesia by a foreign investor, whether using entirely foreign capital, or in partnership with a domestic investor.

Foreign investment is also subject to sector-specific laws and regulations. Sectoral laws may also include restrictions for foreign investors. The main regulatory body for FDI is the Ministry of Investment/BKPM, but depending on the business activity, approvals may be required from specific industry regulators.

Public Access to Foreign Investment Laws and Policies

There is an obligation for the government to ensure public access to all laws and regulations, including on foreign investment, through the requirement to publish all laws and regulations. Law No. 12 of 2011 on Formation of Laws and Regulations (as amended by Law No. 15 of 2019, "Formation Law") requires that an enacted regulation be published in the following gazettes: (i) the state gazette, (ii) additional state gazette, (iii) state news gazette, (iv) additional state news gazette (v) regional gazette, (vi) additional regional gazette or (vii) regional news gazette. Indonesia adopts the *presumptio iures de iure* principle, whereby it is assumed the public knows the laws and regulations. This is in line with Article 81 of the Formation Law, which stipulates that the public is deemed to know the laws and regulations after such laws and regulations have been officially promulgated.

The Government of Indonesia has undertaken measures to ensure that the public has better access to laws and regulations. For example, it

established the National Documentation Network and Legal Information (JDIH), a platform where the public may access legal information. Many provincial governments have established their own JDIH website. In relation to foreign investment, BKPM's JDIH platform provides access to foreign investment-related regulations (although not necessarily comprehensive).

Consultation with Stakeholders

Based on Article 96 of the Formation Law, the public has the right to give any verbal and/or written advice to the government in relation to draft laws and regulations. The law also specifies the category of public that can give such advice, that is, an individual or a group that has an interest in the substance of the draft laws and regulations. However, the prevailing law does not impose any obligations on the government to ensure that consultation with the public is conducted prior to passing of any laws and regulations. A specific initiative to create a public consultation mechanism by the government has been the setting up a website to facilitate public consultation regarding Law no. 11 of 2020.

Predictability and Stability in Policies and Rules

The Formation Law gives the Constitution Law 1945 the final authority in legal matters in Indonesia. It stipulates that any inferior law shall not contain provisions conflicting with the Constitutional Law of 1945. The Formation Law also allows the review of any regulation that may be deemed in conflict with a superior regulation. It dictates the following hierarchy of regulations:

- Constitutional Law of 1945
- The decision of the People's Consultative Assembly of the Republic of Indonesia (*Majelis Permusyawaratan Rakyat*)
- Law or Government Regulation in Lieu of Law
- Government Regulation
- Presidential Regulation
- Provincial Regional Regulation
- Regency Regional Regulation

Under the Formation Law, the Government and People's Representative Council of Indonesia are mandated to disseminate a draft of a rule before its passage into law, for the purpose of providing information to the public and stakeholders.

Rules may also not apply retroactively, with certain exceptions. The Annex to the Formation Law states that generally a law should be effective on the date of its enactment. However, it also provides that an alteration of the effective date is possible if it was expressly stated in the law, among other things, by providing a specific effective date of the law or delegating the determination of the effective date to another law with the same hierarchy. Law No. 30 of 2014 on Government Administration also stipulates that the effective date of a decision by the government may be retroactive, if it is necessary to avoid (i) a greater damage and/or (ii) disregard to the rights of the citizen.

As noted above, the Law No. 25 of 2007 states that the implementation of capital investment is based on the principles of, among others, legal certainty and accountability. The Law further provides that each investor is entitled to (i) certainty of rights, law and protection, (ii) transparent information on the business sectors being operated, (iii) rights to service, and (iv) all facilities under prevailing laws and regulations.

B. International Legal Instruments Regulating Foreign Investment

Indonesia has undertaken legally binding international investment commitments through a variety of international investment agreements (IIA) — signed at the bilateral, plurilateral and multilateral level. These commitments mainly cover entry and establishment conditions, protection, as well as the legality of specific types of incentives (see Table 1.). It is important for Indonesia to reflect these commitments in its domestic legal framework to ensure consistency as well as to monitor their compliance.

Having been a member of the World Trade Organization (WTO) since 1st of January 1995, Indonesia has commitments under several WTO Agreements. Under the General Agreement on

Table 1. Indonesia's International Investment Framework

Agreement(s) as Basis of Commitments	Type of Agreement	Investment Policy Dimensions Covered
WTO GATS Agreements	Multilateral	Entry and establishment
WTO TRIMs Agreement	Multilateral	Entry and establishment, incentives
WTO SCM Agreement	Multilateral	Incentives
WTO TRIPS Agreement	Multilateral	Protection
Treaties with Investment Provisions (21 signed, 17 in force)	Plurilateral or Bilateral	May cover entry and establishment, protection, incentives
Bilateral Investment Treaties (42 signed, 26 in force)	Bilateral	May cover entry and establishment, protection, incentives
International Centre for Settlement of Investment Disputes (ICSID) Convention	Multilateral	Protection (Dispute settlement)
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)	Multilateral	Protection (Dispute settlement)
IMF "Articles of Agreement" (Art. VIII Acceptance)	Multilateral	Protection
Double Taxation Avoidance Agreements (69 treaties in force)	Bilateral	Taxation

Source: World Bank Analysis

Trade in Services (GATS), Indonesia grants rights to services suppliers from other WTO member countries. This includes services supplied through commercial presence (defined as establishment of a territorial presence), in other words through FDI. These rights are granted through commitments undertaken in "schedules". The "schedules" list sectors being opened, the extent of market access being given in those sectors (for example, whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). Indonesia has made commitments on market access and national treatment in 6 out of 12 services sectors that feature in the WTO Classification[1]: (i) Business services, (ii) Communication services, (iii) Construction and related engineering services, (iv) Financial services, (v) Tourism and travel related services, and (vi) Transport services. In these sectors, Indonesia has made partial commitments on market access and national treatment for specific services in 15 sub-sectors. "Partial" means that although commitments have been made, there are still limitations/reservations, which may differ in their restrictiveness. For example, they may be more restrictive by limiting the equity contribution of the foreign investor, or less restrictive by merely requiring foreign service suppliers to become a member of a union chamber. In addition, under GATS every member is obligated to unconditionally extend to service suppliers of all other WTO members Most-Favored Nation (MFN) Treatment. However, Indonesia has made reservations in that regard in two services sectors: construction and related engineering services, and financial services. For example, Indonesia reserves the right to main preferential shortlisting schemes for ASEAN contractors of civil works or industrial construction.

Under the WTO Agreement on Trade Related Investment Measures (TRIMS), Indonesia has committed to not apply certain investment measures that restrict or distort trade (local content requirements, trade balancing requirements, foreign exchange restrictions and export restrictions). These measures are prohibited both when the obligation for the foreign investors is mandatory and when it is tied to obtaining an advantage (that is, an incentive). Incentives are further regulated by the WTO

Agreement on Subsidies and Countervailing Measures (SCM), which among others prohibits certain types of export subsidies. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), foreign investors' intellectual property rights are protected. In case of a violation of any of its WTO commitments, Indonesia may be sued under the WTO dispute settlement mechanism.

Indonesia has further entered into obligations through international investment agreements — it has signed 42 Bilateral Investment Treaties of which 26 are in force, and 21 Treaties with Investment Provisions (TIPs) of which 17 are in force. The latter category comprises treaties that include obligations commonly found in BITs (e.g. a free trade agreement with an investment chapter). Indonesia has in recent years overhauled its bilateral treaty commitments. Since 2014, Indonesia has effectively terminated 23 BITs, mostly on a unilateral basis. At the same time, Indonesia is in the process of entering regional or "megaregional" agreements. Indonesia has on November 15, 2020 signed onto the Regional Comprehensive Economic Partnership Agreement (RCEP), which covers ASEAN member states as well as large economies in the pacific area such as China, Australia, and Japan. It has not yet ratified the agreement. In total, RCEP covers a population of 2.3 billion people, 26.3 trillion USD of GDP and 2690 billion USD in FDI stocks, making it the biggest trade bloc in history. Moreover, in 2018 Indonesia expressed interest to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). CPTPP is a trade and investment agreement between 11 countries, covering a market of 500 million people, 13.5% of world GDP, and 15.3% of world trade.

Table 2. provides an overview of select IIAs: Indonesia's latest IIA (Indonesia - Republic of Korea CEPA , 2020, not yet in force), an IIA with expansive regional coverage (Regional Comprehensive Economic Partnership/RCEP, 2020, not yet in force for Indonesia), as well as its IIA with the largest home country measured by that country's share in Indonesia's total FDI stock (Indonesia-Singapore BIT, 2018). Both RCEP and the Indonesia-Republic of Korea CEPA include the prohibition of performance requirements. The provisions go beyond TRIMS in scope and include a higher number of performance requirements that are prohibited (a so-called TRIMS+ standard).

Some of Indonesia's reviewed IIAs contain commitments to liberalize. RCEP and the Indonesia-Republic of Korea CEPA include such commitments, providing national treatment and most-favored nation treatment in the pre-establishment phase. In both cases, the treaty partners make reservations: Annex 1 lists measures that do not comply with the commitments, and Annex 2 lists sectors and activities in which countries may maintain existing, or adopt new or more restrictive, measures. RCEP also contains a "ratchet mechanism", which ensures that any future regulatory or legal change that makes it easier for investors from one party to access the other party's market will automatically be locked-in under the Agreement and therefore cannot subsequently be made more restrictive.

The table shows that generally the main protection guarantees are provided in the reviewed agreements, although RCEP does not provide for investor-State dispute settlement (ISDS). Under the RCEP, parties are to enter into discussions on ISDS no later than two years after the date of entry into force of the agreement, and conclude them within three years of the commencement of the discussions. RCEP also includes a provision for establishing focal points or other entities within member states, for early resolution of investor complaints and grievances against government agencies.

Indonesia is currently reviewing its model BIT. In that regard, it is considering providing ISDS on a case-by-case basis, requiring the exhaustion of local remedies as a pre-condition, as well as making mediation mandatory.

Indonesia is participating in WTO negotiations on an agreement on investment facilitation for development. The aim of the agreement is to improve the investment and business climate, by improving transparency, efficiency, and effectiveness of investment-related administrative procedures. This agreement will not cover market access, investor protection and ISDS. In December 2021, Indonesia together with 111 other

Table 2. Comparison of Indonesia's Select IIAs

	Largest Home Country IIA (% of total FDI stock): Indonesia- Singapore BIT (2018) (in force)	Latest IIA (date of signing): Indonesia - Republic of Korea CEPA (2020) (not yet in force)	Expansive Regional Coverage IIA (highest number of members): RCEP (2020) (not yet in force)
Scope of Application			
Covers Pre-establishment	No	Yes	Yes
Exclusions from Scope	Government procurement, subsidies or grants, services supplied in the exercise of governmental authority, taxation measures.	Government procurement, subsidies or grants, services supplied in the exercise of governmental authority, taxation measures.	Government procurement, subsidies or grants, services supplied in the exercise of governmental authority.
Standards of Treatment			
National Treatment (NT)	Post-establishment	Pre- and post-establishment	Pre- and post-establishment
Most-Favored-Nation Treatment (MFN)	Post-establishment	Pre- and post-establishment	Pre- and post-establishment
Fair and Equitable Treatment (FET)	Yes	Yes	Yes
Full Protection & Security	Yes	Yes	Yes
Expropriation	Direct and indirect expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation	Direct and indirect expropriation, payment of compensation
Rights to Transfer Funds	Yes	Yes	Yes
Prohibition of Performance Requirements	No	TRIMS+ (Prohibiting a larger number of performance requirements than TRIMS)	TRIMS+ (Prohibiting a larger number of performance requirements than TRIMS)
Dispute Resolution			
State-State Dispute Settlement	Yes	Yes	Yes
Investor-State Dispute Settlement	Yes	Yes	No

Source: World Bank Analysis based on IIAs obtained from United Nations Conference on Trade and Development (UNCTAD) Investment Policy Hub

WTO members co-sponsored a Joint Statement on Investment Facilitation for Development, stating the objective to conclude text negotiations by the end of 2022.

Indonesia is a member of treaties covering investment arbitration. It is a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) and the ICSID Convention, facilitating the enforcement of arbitral awards. It has to date been a respondent in seven publicly known investor-State arbitrations. One of these cases has been settled, three decided in favor of the State, two discontinued and one decided in favor of neither party (liability found but no damages awarded).

Acceptance of Art. VIII of the IMF Articles Agreement requires Indonesia to maintain current account convertibility, enabling investors to transfer certain payments related to their investments. Indonesia is also party to 69 Double Taxation Avoidance Agreements (DTAAs) that are in force, influencing its ability to tax foreign investors and investments.

C. Key Institutions for Investment Promotion

Indonesia has national and sub-national (regional and provincial) level investment promotion agencies charged with investment promotion functions for all economic sectors.

National Level Institutions

The Ministry of Investment/Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or BKPM) is the main institution responsible for investment promotion in Indonesia (see Box 1). Until May 2021, the BKPM was an independent government agency directly reporting to the President of the Republic of Indonesia. In May 2021, based on Presidential Regulation No. 31 of 2021, the government upgraded the BKPM's bureaucratic status to a a full-fledged government ministry, the Ministry of Investment, with the aim of boosting investments and enhancing the ease of doing business in the country. The Chairman of the BKPM assumes the new role of Minister of Investment.

The BKPM is the main link between business and government, responsible for creating a conducive investment climate in Indonesia. It is charged with regulatory functions, including but not limited to issuing regulations related to foreign investment. As part of the reforms initiated under the 2020 Law on Job Creation, on August 9, 2021, the BKPM launched an upgraded version of online single submission (OSS) system for business licensing, adopting a risk-based assessment approach (OSS RBA) pursuant to the Government Regulation No. 5 of 2021. This new regulation significantly reforms the licensing regime, shifting it from the prior commitment-based approach to risk-based approach. In particular, the Government Regulation No. 5 of 2021 on Risk-Based Criteria Business (GR 5/2021) repeals the prior approach of the government under the old OSS system of issuing licensing in advance subject to the fulfilment of certain commitments. Instead, under the new OSS RBA, certain requirements and conditions need to be fulfilled before licenses are issued, depending on the scale of business and level of risk of the relevant lines of business. The OSS system was first introduced in July 2018 to consolidate most business license applications into one online system, prior to which business licenses for most foreign investment companies had been issued by BKPM.

The BKPM has established the Indonesia Investment Promotion Centre (IIPC), an official representative of BKPM in other countries. This entity is in charge of promoting Indonesian investment to potential investors abroad. The IIPC's functions are:

- To carry out investment marketing campaigns and provide investment information;
- Coordinate and synchronize investment marketing programs with Indonesian representatives, relevant institutions in the respective state of domicile and working area, as well as government institutions and business entities in Indonesia;
- Facilitate investment mission from the respective state of domicile and working area to Indonesia and investment mission from Indonesia to the respective state of domicile and working area;
- Facilitate investment problem solving of new or existing investors and encourage investment realization from the state of domicile and working area that have received licenses from BKPM;
- Monitor investment interest and policy in the respective state of domicile and working area;
- Facilitate Indonesian investors who invest in the respective state of domicile and working area;
- Propose the work programs and budget needs in order to accomplish the duties and achieve the investment targets set by BKPM;
- Perform other duties given by BKPM and the head of Indonesia representatives in the respective state of domicile.

Box 1. Ministry of Investment/BKPM —Composition and Main Functions

The BKPM was established in 2007 to coordinate and facilitate investment promotion implementation and investment partnership, among other functions. The Presidential Regulation No. 90 of 2007 on BKPM (as supplemented by the Presidential Regulation No. 64 of 2021), stipulates its composition, main duty and functions.

The BKPM is composed of:

- Chairman
- Vice Chairman
- Secretary General
- Deputy Chairman for Investment Planning
- Deputy Chairman for Strategic Investment Downstream
- Deputy Chairman for Investment Climate Development
- Deputy Chairman for Investment Promotion
- Deputy Chairman for Investment Cooperation
- Deputy Chairman for Investment Services
- Deputy Chairman for Investment Supervision and Controlling
- Deputy Chairman for Investment Information and Technology

Its main mandate is to coordinate policies and services relating to capital investment based on the provisions of laws and regulations of the country, and its functions include the following:

- Analyzing and proposing national investment planning
- Coordinating implementation of national policies in the field of investment
- Analyzing and proposing policies of investment services
- Determining norms, standards, and procedures for the implementation of investment services
- Developing opportunities and potential investments in the region by empowering business entities
- Creating investment maps in Indonesia
- Coordinating promotional activities and investment cooperation
- Developing investment sectors through investment fostering by, among others, promoting partnerships, improving competitiveness, creating healthy competition, and disseminating the broadest information in terms of investment activities
- Fostering the implementation of investment, assisting in the settlement of various obstacles, and providing consultations on problems faced by investors in carrying out investment activities
- Coordinating and implementing one-stop services
- Coordinating domestic investors that are investing outside Indonesia
- Providing licensing services and investment facilities
- Coordinating the implementation of duties, development and administration support to all of the organization structures within BKPM
- Management of state's assets or goods which is within BKPM's responsibility
- Supervision over duty implementation within BKPM
- Implementing other functions in the field of investments in accordance with the provisions of the legislation

Sub-National Investment Promotion Agencies

Article 30 of the Law No. 25 of 2007 empowers regional and provincial governments to implement capital investment activities that fall within their authority. Most local governments at the province and regency level generally have their own local investment agency. The name of this agency may vary from one local government to another, but it is commonly called *Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu* or the Investment and One-Door Integrated Services Agency.

Although the establishment of the OSS in 2018 has centralized and integrated licensing processes (see further Section 3 – Investment Entry and Establishment), regional governments continue to supervise business actors to ensure they meet their commitments and impose sanctions for noncompliance through the OSS agency. The OSS RBA attempts to integrate local governments licensing systems within the OSS and streamline the business licensing process at the regional level.

D. Foreign Investment Promotion Strategy

The Indonesian government does not have a specific foreign investment promotion strategy, but its investment strategy and targeted economic sectors can be inferred from the country's 20-year National Long Term Development Plan (*Rencana Pembangunan Jangka Panjang Nasional or RPJPN*) (2005-2025). The RPJPN has been implemented through Law No. 17 of 2007, and is publicly accessible at the official website of the Ministry of National Development Planning/National Development Planning Agency. It is structured to be implemented in four stages, with each stage having a five-year plan called the National Medium Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional RPJMN*). The current five-year plan launched in January 2015, Third RPJMN of 2015-2019, contains the Nawacita development agenda (that is, nine priority programs) of President Joko Widodo's administration.

Based on the Presidential Regulation No. 90 of 2007 as amended by Presidential Regulation No. 24 of 2020 on the BKPM, the following deputies are tasked with a responsibility of driving foreign investment:

- Deputy Chairman for Investment Planning
- Deputy Chairman for Investment Climate Development
- Deputy Chairman for Investment Promotion
- Deputy Chairman for Investment Cooperation

3. INVESTMENT ENTRY AND ESTABLISHMENT

Market Entry and Sectoral Limitations

Article 12(1) of Law No. 25 of 2007 expressly permits investment in all business sectors of the economy, except in those sectors that are specifically closed or open subject to restrictions under Indonesian law. More specifically, Article 12(2) states that foreign investment is prohibited in certain sectors such as weapons and war equipment and in sectors that are determined closed by law (Prohibited Sectors). Article 12(3) empowers the Indonesian government to determine the sectors closed to both domestic and foreign investment by way of Presidential Regulation based on criteria of health, morals, culture, environment, national defense and security, and other national interests. Similarly, Article 12(5) empowers the government to determine the business sectors open with restrictions based on national interest, also by way of Presidential Regulation (Restricted Sectors).

As part of the reforms under the 2020 Law on Job Creations, on March 4, 2021, the Indonesian government enacted the Presidential Regulation No. 10 or 2021 (which was amended by Presidential Regulation No. 49 of 2021). The new regulation revokes the 2016 Negative List (promulgated under the Presidential Regulation No. 44 of 2016 on the List of Business Activities Closed and Open to Investment) and provides a new, significantly liberalized, investment list ("2021 Investment List"). The general principle under this list is that a business line is open to 100% foreign investment unless subject to specific limitations in the regulation.

The 2021 Investment List classifies business fields into the following categories:

- **Prohibited Sectors** — These are specifically reserved for the government where no private investment is permitted, whether domestic or foreign. 6 business lines fall under this category, down from 20 business activities under the 2016 Negative List.
- **Sectors with Restrictions** — These are subject to specific conditions, e.g. reserved for domestic investors only, foreign equity caps, and businesses requiring special licenses. 37 business activities fall under this category, down from 350 business activities under the 2016 Negative List. Only 12 business fields are reserved for domestic investors and 25 business fields are subject to foreign equity caps.
- **Sectors Reserved for Cooperatives and MSMEs** — There are two sub-categories:
  - Activities that are reserved for cooperative and MSMEs only (60 business activities fall under this category). These are business activities that do not use technology or use simple technology, are labor intensive or related to special cultural heritage, or the capital required for business activities does not exceed IDR 10 billion (excluding land and building)
  - Activities that are open to foreign investment if the business is conducted based on a partnership with a cooperative or MSME (i.e., requiring compulsory partnership which can be in the form of operational cooperation, franchise, distribution, joint ventures, profit sharing, outsourcing etc.) These are business activities with scale-up purpose to enter the supply chain. 46 business activities fall under this category.
- **Priority Sectors** — These business lines are open to 100% foreign investment and are entitled to receive fiscal and non-fiscal incentives. Investments under this category are of national strategic significance, capital intensive or labor intensive, require advanced technology, or are pioneering industries, export-oriented and/or oriented towards research, development and innovation (e.g., textiles, pharma, automotive, cosmetics etc.). 246 prioritized business lines are enumerated under this category.

- **Other Sectors** — Any sectors not listed in the above categories are open to all investors, including 100% foreign investment.

Apart from the Prohibited Sectors, Sectors Reserved for Cooperatives and MSMEs, and Sectors with Restrictions, the general position is that 100% foreign equity is permitted in a sector or sub-sector. The registration and licensing of FDI is centralized and integrated through the reformed OSS RBA implemented in August 2021. Certain sector-specific laws (particularly in financial and banking sectors) may impose prohibitions or restrictions on FDI in the relevant sector, or require the relevant regulator's approval. For example, the regulation on e-money issued by Bank Indonesia (BI), Indonesia's central bank, in May 2018 introduced a restriction on foreign ownership in e-money companies. However, Article 13 of the Presidential Regulation No. 10 or 2021 states that all sector–specific requirements under laws and regulations will continue to be effective so long as those laws and regulations do not contradict the provisions and requirements under the 2021 Investment List.

Notably, the reforms since 2020 have significantly liberalized foreign investment in a number of important sectors, reducing the prohibited sectors from 20 to 6 business lines and removing or liberalizing foreign equity caps and other restrictions in various other sectors, reducing the restricted sectors from 350 to 37. Some of the liberalized sectors include: wholesale distribution previously capped at 67% is 100% open to foreign investment; foreign equity caps for the telecom, media and technology, transportation, healthcare, energy and construction services have been removed, permitting 100% foreign investment; airport services and seaport facilities previously capped at 49% and airport-related services and terminal supporting services previously capped at 67% are now 100% open to foreign investment; foreign equity restrictions on electricity transmission and electricity distribution and on power plants with a capacity greater than 1 MW have been removed to permit 100% foreign investment; foreign equity restrictions in construction consultancy services and construction implementations services for high-risk, high technology, and/or high-value construction works have been removed; and drinking water business is also fully liberalized from previously capped 95% to 100% foreign investment.

Prohibited and Restricted Sectors

Table 3 lists the Prohibited and Restricted Sectors based on the 2021 Investment List. The 2021 Investment List enumerates the business activities that are prohibited, restricted or prioritized, organized by reference to the characterization of business activity described in the Indonesian Business Classification Codes (Klasifikasi Baku Lapangan Usaha Indonesia (KBLI). The KBLI numbers are used by BKPM to determine which foreign investment restrictions will apply to foreign investors under the List.

There is no general requirement to form a joint venture with a local partner to establish business in Indonesia, but in Restricted Sectors where less than 100% FDI is permitted, foreign investors are (by implication) required to form joint ventures with a local partner. For example, because FDI in the automobile and repair industry is limited to 49% the only way a foreign company can set up operations in that industry within Indonesia is by establishing a joint venture with one or more local partners. A foreign investor may not bypass the foreign equity caps in the Restricted Sectors by mergers and acquisitions.

Restrictions on Non-Equity Contract Based Investments

Generally, no special restrictions or conditions are imposed on foreign investors relative to domestic investors as regards non-equity, contract-based investments such as franchising, outsourcing, licensing, and so forth.

Forms of Establishment

Pursuant to Article 5 of the Law No. 25 of 2007, all foreign capital investment in Indonesia must be implemented through an Indonesian limited liability company domiciled in the country, often referred to as a Penanaman Modal Asing or "PMA company". Foreign investors may freely

Table 3. List of Major Prohibited and Restricted Sectors based on the 2021 Investment List

Prohibited Sectors	Scope
Reserved for Government	
Ammunition	Weapons system equipment
Museums	Government museums
Relics	Historical and ancient relics
Navigation	■ Flight navigation operations ■ Telecom/infrastructure to shipping navigation and vessels
Prohibited for Both Domestic and Foreign Investment	
Narcotics	Cultivation of Class 1 narcotics
Gambling	Gambling/casino activities
Fishing, marine and forestry	■ Fish catching for species listed in Attachment I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; ■ Coral and sea rock utilization or harvesting as material for building/calcium, aquariums, and souvenirs/jewelry, as well living and recent death coral
Chemicals and chemical products	■ Chemical weapon industries ■ Industrial chemical substances and ozone depleting substances industry
Prohibited for Foreign Investment	
Agriculture	Coffee processing industry that has obtained geographical indications
Alcoholic Beverages	Alcoholic liquor, beverages, malt beverages
Textiles	Batik Industry: stamped batik industry
Chemicals and Chemical Products	Traditional cosmetics industry
Pharma, Medicine	■ Industry of raw materials for traditional medicine for humans ■ Industry of traditional medicine products for humans
Wood and Wood Products	■ Wooden goods industry ■ Ship industry—Phinisi; Outrigger / Cadik; Other wooden boats with traditional distinctive designs
Travel and Tourism	Special Umrah and Hajj travel agency activities
Media and Entertainment	Art gallery
Fishery	Fish processing
Handicrafts	Traditional handicrafts
Food	Crackers and chips industry
E-Commerce in certain products	E-commerce involving goods such as (1) food and beverages, tobacco, chemicals, pharmacy, cosmetics, and laboratory equipment; (2) textile, clothes, footwear and personal equipment; (3) household and kitchen equipment
Sectors Reserved for Cooperatives and MSMEs—No Foreign Investment Permitted	
Agriculture, Hunting, Forestry, Fishery	Food crop farming with an area of less than 25 Ha, collection of forest products
Agro-processing, Food Products	Fish preservation industry, brown sugar industry, crackers, chips industry
Textiles	Weaving, ikat, batik, embroidered fabrics, traditional clothing
Rubber	Rubber curing industry
Pharma, Medicine	Traditional medicine
Metals and Metal Products	Industry of cutting tools and hand tools for agriculture, including cutting tools and hand tools for agriculture from metal that is not driven by power, carpentry tools
Non-metal Mineral Products	Manufacture of household appliances made of clay/ceramic, in the form of pottery and decorative ceramics
Wood and Wood Products	Wickerwork industry, wood carving craft industry

Automobiles, Other Motor Vehicles and Transport Equipment	Industry of maintenance and repair of motorcycles other than those integrating with sale of motorcycles
Other Manufacturing	Traditional Musical Instrument Industry
Electricity	Provision of electricity for power generation < 1 MW
Construction	Construction of buildings using simple and intermediate technology, Civil road construction includes maintenance, road construction using simple and intermediate technology, Installation of prefabricated buildings for construction of irrigation and drainage networks, drinking water, Construction of civil buildings, telecommunications for transportation infrastructure, demolition, land preparation using simple and intermediate technology
Wholesale and Retail Trade	-Retail trade - minimarket, non-alcoholic beverages, pharma goods and medicines, rice, bread, pastries and cakes, coffee, granulated sugar, etc. Retail trade through postal orders and the internet for commodities of food, beverages, tobacco, chemicals, pharmaceuticals, cosmetics, laboratory equipment, textiles, clothing, footwear, personal goods, household goods and kitchen utensils
Hotels and Restaurants	Lodging services- one star hotels, guest houses
Travel and Tourism	Tourism travel agents, tour guides
Professional, Scientific and Technical Services	Transportation consulting activities, architectural activities, engineering and technical consulting, engineering installation, and lab testing using simple and intermediate technology, inspection and testing of electrical power on installations supply of electricity or use of electric power
Health Services	Primary Clinics: private maternity homes, clinic general medical, public medical clinics, residential health services and basic health care facilities
Other Services	Photocopying, document preparation and other special office support services, laundry, barbershops, beauty salons

Restricted Sectors	Restrictions on Foreign Equity
Defence and security	Weapons and ammunition industry; War vehicle industry; Industry of defense radar for weapon systems; Warship industry; Military aircraft industry—up to 49% or more subject to approval from Ministry of Defence
Construction	Construction of buildings—office building; industrial building—up to 67% (70% for ASEAN countries' investors)
Logistics, Transport and Storage	■ Water transport; domestic scheduled and non-scheduled air transportation (commercial); air transport activities; domestic passenger liner and tramp activities; domestic sea transport for tourism; domestic liner and tramp sea freight for goods; domestic sea transport for special goods; pioneer domestic sea transportation of goods; domestic sea transportation using public shipping; overseas liner and tramp sea freight for goods; overseas sea transportation for special goods; interprovincial sea public transport; river and lake transportation with non-fixed and irregular routes—up to 49% ■ Postal and courier services—up to 49%
Professional, Scientific and Technical Services	Consultancy in the field of electrical power installation—up to 67% (70% for ASEAN countries' investors)
Media and Entertainment	Private broadcasting agency; subscription based broadcasting agency; community radio agency; community television agency— up to 20% for business expansion and development only
Publishing	Publishing of newspaper, magazine and bulletin (press)—up to 49% for business development and expansion only
Horticulture	Up to 30%
Insurance	Up to 80% pursuant to the Government Regulation No. 14 of 2018 on Foreign Ownership on Insurance Companies

Foreign Investment Subject to Partnerships with Cooperatives and MSMEs	
Agriculture, Hunting, Forestry, Fishery	Cultivation of broiler chickens, rearing of marine fish, hatchery of marine fish
Mining and Quarrying	Salt production/extraction business
Agro-processing, Food Products	Agro-processing, fishery product processing business, fish canning, pickled fruits and vegetables industry
Chemical and Chemical Products	Coconut industry, essential oil industry
Pharma, Medicine	Medical device industry in Class 2101
Metals and Metal Products	Nails, nuts, bolts industry, jewelry goods of precious metal
Non-metal Mineral Products	Manufacture of bricks and ceramics, lime industry, recycle of non-metal material industry
Automobiles, Other Motor Vehicles and Transport Equipment	Two- and three-wheeled motor vehicles components and apparatus Industry, Service of repairing ships, boats and floating buildings, Repair services for other transportation equipment, not motorized vehicles
Machinery and Electrical and Electronic Equipment and Components	Industry of engine and turbine components and parts, Industry of spare parts and accessories for motorized vehicles with four or more wheels
Other Manufacturing	Coconut fiber industry, Industry of imitation jewelry and similar goods, Gemstones industry
Construction	Construction of bridges and overpasses using simple and intermediate technology
Postal and Courier	Courier agent activity
Health Services	Clinical health labs

Source: Analysis by Kilpatrick Townsend & Stockton LLP based on country's laws and regulations.

Note[2]: The table is based on a review of 32 specific sectors identified for the purpose of this research. The list of sectors is therefore not exhaustive.

invest, and generally hold any type of shares in a PMA company (for example, ordinary shares and preference shares). The BKPM requires domestic companies be converted into a PMA company if any shares of the domestic company are owned by foreign investors. Apart from the Restricted Sectors, there is no statutory prohibition against the establishment of a wholly foreign-owned PMA subsidiary in any other sector, provided the necessary regulatory approvals to carry on business activities in Indonesia have been obtained. Foreign investors are also allowed to set up a representative office in Indonesia, subject to regulatory approvals. Setting up of branch offices of foreign companies in Indonesia may be allowed only in certain fields, such as banking and certain energy projects.

Minimum Investment and Paid-up Capital Requirements

Foreign investors are subject to minimum investment as well as paid-up capital requirements.

In April 2021, the BKPM issued Regulation No. 4 of 2021 pursuant to which a PMA is required to have a minimum of IDR 10 billion capital investment for every five-digits of KBLI per project location (excluding the investment in land and building), with minimum paid-up capital of IDR 10 billion. Paid up capital is the minimum value of the initial investment required to establish a PMA which is 25% of the minimum capital requirement. Each business sector to be entered may require the establishment of a separate PMA and in such case the minimum capital requirements apply to each business sector to be entered into, subject to a few exceptions. For example, a PMA engaged in the food and beverage industry with a total investment value of more than IDR 10 billion will not be required to add another IDR 10 billion if it engages in another business line that is still within its two initial digits of the KBLI number. Similarly, a PMA engaged in large-scale trading or construction with a total investment value of more than IDR 10 billion will not be required to add another IDR 10 billion if it engages in another business line that is still within

its four initial digits of the KBLI number, and for industrial activities that produce various products, there needs to be five matching KBLI numbers in order waive the requirement of additional IDR 10 billion for paid-up capital.

This requirement does not apply to representative offices and foreign business entities that conduct business in Indonesia without having a local subsidiary as a PMA company. Article 12 of BKPM Regulation No. 4 of 2021 also stipulates that other applicable laws and regulations may require a different threshold for the capital requirement. For example, Article 8 of the Ministry of Transportation Regulation No. PM 49 of 2017 stipulates that a freight forwarder with a status of foreign investor must have minimum investment of US$4 million and minimum 25% of the authorized capital must be issued and paid-up. Similarly, in the banking sector, for commercial banks there is a minimum paid up capital requirement of IDR 3 trillion. Technology-based start-ups in SEZ are also exempted from the minimum investment value requirement for foreign investment of IDR 10 billion (excluding lands and buildings) for certain period of time.

Prior to this new BKPM regulation in 2021, the minimum issued and paid-up capital for foreign investors was IDR 2.5 billion and the minimum investment value for foreign investors was more than IDR 10 billion per line of business. With this increase in paid up capital requirements from IDR 2.5 billion to IDR 10 billion, the government aims to attract more high-value investments in the country.

Quantitative Limits

There are generally no mandatory quantitative limits on the number of foreign service providers, enterprises or market players that can operate in a given sector.

Restrictions on Expatriate Appointments

In general, there is no specific restriction on foreigners being appointed as board members of local companies or in key managerial positions, but foreigners are not permitted to handle any matters related to human resources. Under the Ministry of Manpower Decree No. 349 of 2019, foreigners are prohibited from holding positions that handle matters related to human resources, specifically the following positions:

- Personnel director
- Industrial relation manager
- Human resource manager
- Personnel development manager
- Personnel recruitment supervisor
- Personnel placement supervisor
- Employee career development supervisor
- Personnel declare administrator
- Personnel and careers specialist
- Personnel specialist
- Career advisor
- Job advisor
- Job advisor and counselling
- Employee mediator
- Job training administrator
- Job interviewer
- Job analyst
- Occupational safety specialist

The procedures for obtaining foreigners' work permits, including the timeline, are regulated under the new Government Regulation Number 34 of 2021 on Procedures of Foreign Manpower Utilization (GR 34/2021) issued in February 2021. This new regulation implements the Law No. 11 of 2020 on Job Creation and aims to simplify the process for hiring expatriate workers in Indonesia and in turn attract greater investment into the country.

Under the prior regulation (Ministry of Manpower Regulation No. 10 of 2018), employers were required to obtain approval from the Ministry of Manpower for their foreign worker utilization plan (*Rencana Penggunaan Tenaga Kerja Asing* or RPTKA) and a notification issued by the Ministry prior to employing foreign workers. GR 34/2021 removes the notification requirement but adds a requirement for RPTKA feasibility assessment.

In this assessment, the Ministry of Manpower will determine within two business days whether the submitted information and documents are in order and deemed feasible based on the feasibility assessment, and upon such verification and payment of the Foreign Worker Utilization Compensation Fund by the applicant, the Ministry will issue the RPTKA approval.

GR 34/2021 obligates employers to submit an annual report to the Ministry of Manpower on their employment of foreign workers, which report will cover the implementation of (i) foreign workers employment, (ii) education and training of Indonesian co-workers, and (iii) transfer of technology and expertise from foreign workers to Indonesian co-workers. New administrative sanctions are introduced in the form of a fine on employers (for up to IDR 36 million), temporary suspension of application process for the RPTKA approval and revocation of RPTKA approval for violations of the provisions of GR 34/2021.

In general, there is no regulation expressly requiring foreign investors to hire local employees. However, pursuant to Article 10 of the Law No. 25 of 2007 and Article 2 of the GR 34/2021, every employer is obligated to give priority to Indonesian manpower in meeting its hiring needs and to increase the competencies of Indonesian manpower through education and training.

Local Sourcing and R&D Requirements

The use of local content is required in some sectors (as an operational condition), but the requirement applies equally to both domestic and foreign investors. For example, Article 7 of Ministry of Trade Regulation No. 23 of 2021 stipulates that shopping centers must provide a promotion area for locally manufactured goods with a space minimum 30% of the total area of the shopping centers. Some industrial regulations provide more benefits for the utilization of local products (e.g., price preference for tender in oil and gas industry). Minister of Trade Regulation No. 7 of 2013 concerning Development of Partnership for Food and Beverages Franchises requires food and beverage franchises to source 80% of their raw materials and equipment domestically. Similarly, Minister of Communication and Information Regulation No. 27 of 2015 on Technical Requirements for Telecommunication Devices with LTE Technology requires minimum 30% local content for “base station” and minimum 20% local content for “subscriber station.” Further, certain regulations only encourage prioritizing local industries, such as Presidential Decree No. 146 of 2015 on Construction and Development of Oil Refinery and Minister of Trade Regulation No. 71 of 2019 on Operation of Franchises.

There are no requirements to invest in local R&D in order to establish a business in the country. However, the government provides tax incentives for R&D activities in 11 specific business sectors, among others in the form of reduction in gross income of up to 300% of the amount spent on R&D. The scope of business eligible for this incentive are the following sectors related to: food; pharmaceuticals, cosmetics, and medical devices; textiles, leather, footwear, and miscellaneous; transportation; information and communications technology; energy; capital goods, components, and auxiliary materials; agroindustry; base metal and non-metallic minerals; basic chemicals based on oil, gas and coal; as well as defense and security.

Foreign Investment Approval

Foreign investors require approval in the form of a business license (*izin usaha*) to conduct commercial operations in the country. It should be noted that domestic investors must also obtain this business license. In general, the business license approval will be granted if the investment does not violate the 2021 Investment List and has fulfilled the minimum capital investment requirement and applicable sector-specific requirements.

In 2018, the Government of Indonesia introduced the Online Single Submission (OSS) system to grant business licenses, which was further reformed in August 2021 pursuant to the Law No. 11 of 2020 regarding Job Creation, BKPM Regulation No. 4 of 2021 and Government Regulation No. 5 of 2021 on Risk-Based Criteria Business Licensing (GR 5/2021). Business licenses for most foreign investment companies were previously issued by BKPM. The OSS system consolidates the license applications

into one online system, applies to all business entities, and intends to capture all sectors and integrate all government agencies. It also provides comprehensive information about various policies and requirements set out for business, including the maximum foreign ownership of relevant business in accordance with the 2021 Investment List, the required procedures, as well as the estimated timeline for the license application process for improved transparency.

The introduction of the reformed OSS system (OSS RBA) signals a change in approach to registering a business. The OSS RBA adopts a risk-based assessment approach under which certain requirements and conditions will need to be fulfilled before licenses are issued depending on the scale of business and level of risk of the relevant business lines. This new risk-based approach changes the prior commitment-based approach of the government. Under the old OSS system, licenses were issued subject to the fulfilment of certain commitments and obligations (such as obtaining local permits and approvals from local government) and these licenses became effective only after all commitments and obligations were fulfilled.

GR 5/2021 contains information on (i) KBLI numbers for business activities (divided by business sectors), the level of risk for the KBLI numbers, and the licenses required for the KBLI numbers based on the level of risk, (ii) supporting licenses required to conduct the business activities (divided by business sectors), (iii) requirements and/or obligations to obtain the required licenses and supporting licenses, (iv) guidelines for the government to determine the level of risk of a business activity, and based on the level of risk, determine the required licenses, and (v) guidelines for ministers and sectoral agencies in determining business standards (requirements) or product standards (requirements) applicable for their business sectors.

Business activities are categorized based on the risk level of the business activities, which will determine the required licensing. The lower the business risk, the simpler the process to attain a business license:

- **Low risk business activities** — Only a business identity number (known as *Nomor Induk Berusaha* or NIB) is required to prepare for the business activities (such as land acquisition, building construction, equipment procurement, hiring manpower etc.) and operate or conduct commercial activities. Certain supporting licenses may also be required depending on the business activity.

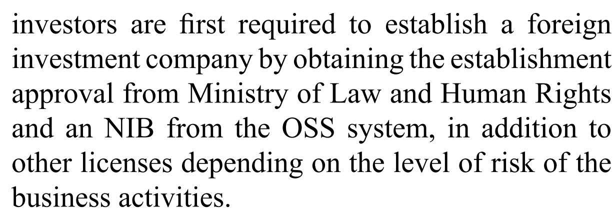
- **Medium risk business activities** — These are divided into medium-low and medium-high risk.

    - For medium-low risk business activities, only an NIB and standard certification (in the form of self-declaration) is required to prepare for the business activities and operate or conduct commercial activities. Companies are also required to submit a self-declaration in the OSS system committing to meet the applicable business or product standards. Supervision is carried out by the government to ensure that business actors meet the business standards.

    - For medium-high risk business activities, an NIB and standard certification (self-declaration) are required to prepare for the business activities but business actors can operate or conduct commercial activities only after the government verifies the standard certification. Certain supporting licenses may also be required depending on the business activity.

- **High risk business activities** — An NIB is required to prepare for their business activities and a business license is required to operate and conduct commercial activities. Certain supporting licenses, business standard certification or product standard certification may also be required.

Under the OSS system, companies must self-assess the required business licenses and the corresponding KBLI number, capital requirements and other requirements and conditions to obtain the licenses and to ensure compliance. In case of non-compliance during government checks, a company's registration may be frozen, and dealings with the government and third parties may be delayed or become onerous until there is compliance. Foreign



investors are first required to establish a foreign investment company by obtaining the establishment approval from Ministry of Law and Human Rights and an NIB from the OSS system, in addition to other licenses depending on the level of risk of the business activities.

In general, a business license is currently issued without any expiration date. As such, it is valid as long as the company is still conducting the relevant business, or as long as the business license has not been revoked, with few sector specific exceptions (e.g., mining business license). For a business license issued through the OSS system, the process is regulated under GR 5/2021. In practice, issuance of business licenses through the OSS RBA system can generally take around 2-5 working days. The business licenses will only be effective after the recipient investor complies with the applicable commitments/obligations imposed on the investor with respect to the sector or business activity for which the license is granted. Some sectors, e.g. manufacturing, may require more commitments/obligations to be fulfilled compared to services in general. These commitments may be in the form of obtaining approvals or permits from local government having jurisdiction over the project location. If the local government has not been integrated with the OSS RBA system, it might be more time consuming to obtain approvals or permits from that local government. Business licenses for certain sectors such as electricity, downstream oil and gas, mineral and coal, public works and housing, and licenses to open a branch or representative office in the country are not administered by the OSS system.

4. INVESTMENT PROTECTION

Protection Against Expropriation

Investments in Indonesia, both domestic and foreign, are generally protected against expropriation under the Law No. 25 of 2007. Article 7 of the Law specifically prohibits the government to undertake any nationalization action or take over the ownership rights of domestic or foreign investors unless under legal provision. In the event that the government either nationalizes or takes over the ownership right of any investors, the government is required to pay compensation based on market value. If there is no consensus on the amount of compensation among the parties relative to the nationalized assets, then the dispute shall be settled through arbitration.

Restrictions on Inflow and Outflow of Funds

Article 8 of the Law No. 25 of 2007 stipulates that an investor may freely transfer and repatriate in foreign currency its assets to parties appointed by the investor, in accordance with prevailing laws of the country. The types of assets include the following:

- Capital
- Profits, bank interest, dividends and other income
- Additional funds which are required to finance capital investment
- Funds for repayment of loans
- Royalties or expenses
- Personal income of expatriates who work in capital investment companies
- Proceeds of sale or liquidation of the capital investment company
- Compensation for losses
- Compensation for takeover
- Payments for technical assistance and technical and management service fees, and payments under project contracts, and payments for intellectual property rights
- Proceeds from the sale of assets of capital investment companies

These repatriation rights do not infringe upon the government's ability to require reporting of repatriation activities and transfer of funds, receive tax and royalties and other government income from capital investment, nor do these rights provide protection from creditors. Article 9 of the Law empowers the Minister of Finance and courts to request the bank or other institution to delay transfer or repatriation until all liabilities of the investor are met.

Indonesia currently permits the free transfer of funds subject to a number of reporting requirements that aim to prevent, among other things, money laundering. In most cases, the bank executing the transfer of funds is responsible for reporting the transfer. Additionally, Bank Indonesia has introduced regulations requiring reports of transactions over a certain value.

In general, all domestic transactions must be conducted using Indonesian currency (rupiah), with special exceptions granted to specific business sectors, purposes and areas as stipulated by Bank Indonesia (see further Box 2.). This mandatory use of rupiah is not intended as a capital control because any person can freely hold, transfer or exchange foreign currency. The transfer of foreign exchange to and from abroad is, however, subject to disclosure and reporting obligations to Bank Indonesia.

Box 2. Mandatory use of Rupiah for Domestic Transactions in Indonesia

Bank Indonesia Regulation No. 17/3/PBI/2015 on Mandatory Use of Rupiah Within the Territory of the Republic of Indonesia (PBI 17/2015) requires that a party (whether domestic or foreign) must use Rupiah for any transaction conducted within the territory of Indonesia.

Article 4 of PBI 17/2015 provides that the mandatory use of rupiah is not applicable for:

- Certain transactions related to the implementation of the State budget
- Receipt or grant of offshore grants n International commercial transactions
- Bank deposits in foreign currency
- Foreign (offshore) loan transactions
- Transactions in foreign currency conducted based on prevailing laws and regulations (such as any business in foreign currency conducted by banks
- Transactions in the primary and secondary market of securities issued by the government in foreign currency)

Pursuant to PBI 17/2015, "international commercial transactions" include:

- Any export and/or import of goods to or from outside the Indonesian customs area; and/or
- Cross border commercial transactions which include:
  - Cross-border supply (that is, supply of services from one country to another country. For example, online purchase or call centers); and
  - Consumption abroad (that is, services provided by service providers outside Indonesia to Indonesian citizens. For example, services for Indonesian citizens provided by foreign hospitals).

Any additional activities related to the export or import of goods to or from outside the Indonesian custom area are not categorized as "international commercial transactions" and are therefore subject to the mandatory use of rupiah. These activities include activities conducted using vessels, airplanes, or other transportation means.

Additionally, under Bank Indonesia Regulation No. 18/18/PBI/2016 on Foreign Exchange to Rupiah Transaction between Banks and Domestic Parties, any conversion of Rupiah to a foreign currency in excess of specified thresholds requires an underlying transaction. The specified thresholds are:

- For the purchase of foreign currency against rupiah, limited to US$25,000 per month per customer for spot transactions and US$100,000 per month per customer for derivative transactions;
- For the selling of foreign currency against Rupiah, limited to US$5 million per transaction per customer for a derivative transaction in the form of a forward and US$1 million per transaction per customer for an option transaction.

The "underlying transaction" referred to above must relate to one or more of the following activities:

- Domestic and international trade of goods and services,
- Investment in the forms of direct investment, portfolio investment, loans, capital and other investment inside and outside the Republic of Indonesia, or
- Granting of a bank loan or financing in foreign currency or rupiah for investment and trade activities.

The "underlying transaction" must not include:

- A placement of funds in banks in the form of, among others, savings account, demand deposit account, time deposit, or Negotiable Certificate Deposit,
- Money transfers by a remittance company,
- Granting of credit facility not yet withdrawn (for example, standby loan and undisbursed loan), or
- Use of Bank Indonesia Securities in foreign currency.

Specific reporting requirements also apply to offshore loans. Under the prevailing laws and regulations in Indonesia, a non-bank company acting as a borrower of an offshore loan is obliged to submit certain reports to: Bank Indonesia, the Ministry of Finance (MOF), and Offshore Commercial Loan Coordinating Team (PKLN Team) (see for example, Box 3.)

Box 3. Reporting Requirements for Offshore Loans

BI issued Regulation No. 16/21/PBI/2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations (as amended by Regulation No. 18/4/PBI/2016, Regulation 16/21). Together with Regulation 16/21, BI also issued Bank Indonesia Circular Letter No. 16/24/DKEM of 2014 as last amended by Bank Indonesia Circular Letter 17/18/DKEM of 2015 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations which sets out the implementation of the Regulation 16/21 in more detail. Regulation 16/21 requires Indonesian non-bank companies that borrow offshore in foreign currency to fulfil three prudential criteria: (i) Hedging Ratio (ii) Liquidity Ratio (iii) Credit Rating.

Under Regulation 16/21, there is no approval requirement. Borrowers must submit a report (together with supporting documents) to BI about their compliance with the prudential requirements. BI will monitor the compliance and if BI finds that a borrower is not in compliance with the three prudential criteria, it will apply an administrative sanction in the form of a warning letter and monetary sanctions.

Transfer of Foreign Currency must be from Bank Devisa. BI Regulation No. 16/10/PBI/2014 on Receiving Foreign Currency From Export Revenue and Withdrawal of Offshore Loans (as amended by BI Regulation No. 17/23/PBI/2015, Regulation 16/10) requires that any foreign currency arising from (i) export revenue must be received through or (ii) offshore loans must be withdrawn from, a bank which is licensed by BI to do foreign exchange activities (Bank Devisa). Regulation 16/10 in conjunction with BI Circular Letter No. 18/5/DSta of 2016 on Receiving Offshore Loan Foreign Currency further emphasis that the offshore loans that are subject to this requirement are those arising from:

- Non revolving loan agreements that are not used for refinancing purposes;
- Any difference between the amount of a refinancing facility and the amount of the previous loan; and
- Debt securities in the form of bonds, medium term notes, floating rate notes, promissory notes and commercial paper.

The withdrawal of the loan must be reported by the borrower to BI. This report must be accompanied with a supporting document evidencing that the borrower has withdrawn the offshore loan from a Bank Devisa. This report must be filed with BI at the latest of the 15th day of the following month, which may be submitted together with the Monthly Report (as defined below). Also, the debtor must provide a written explanation and supporting documents to BI if there is any discrepancy of an equivalent amount of more than Rp50 million between the amount of loan disbursed and the total loan commitments. These requirements do not apply to offshore loans given for the purpose of refinancing where the amount of the new loan is the same as the existing loan.

Reports on Offshore Loans to BI:

Based on Bank Indonesia Regulation No. 16/22/PBI/2014 on the Reports of Foreign Exchange Traffic Activities and the Prudential Principles Implementation Report in Managing Offshore Loan for Non-Bank Corporation (as amended) (Regulation 16/22) a company that incurs an offshore loan must report it to BI. The purpose of Regulation 16/22 is to mitigate all risks caused by offshore borrowing by Non-Bank Corporations to Indonesian Monetary system. Under Regulation 16/22, a company intending to obtain long term offshore loans (that is, a loan having a tenor of more than one year) is required to submit an offshore loan plan report to BI. The offshore loan plan must be submitted no later than the March 15 of the relevant year. Any amendments to the offshore loan plan must be submitted at the latest by July 1 of the relevant year. Furthermore, a company that receive offshore loan is also required to file an online monthly report on the realisation of the offshore loans with BI at the latest of the 15th day of the following month. No offshore loan plan is required for short term offshore loans.

In addition, the borrower must submit prudential principles implementation reports (PPIR) as follows:

- PPIR and quarterly financial report: at the latest three months after the reported quarter
- Attested PPIR and audited yearly financial report: by the end of June of the following year
- Credit rating report: by the end of the month following the month when the loan is entered into

Reports on Offshore Loans to MOF:

The obligation to submit a report to the MOF is based on Decree of Minister of Finance No. 261/MK/IV/5/1973 on Provisions on the Receiving of Offshore Loan, as amended by Decree of the Minister of Finance No. 417/KMK.013/1989 and further amended by Decree of the Minister of Finance No. 279/KMK.01/1991. The reporting obligation to the MOF only applies for:

- An offshore loan that has a term of more than 1 year after the date of signing
- An offshore loan that has a term of 1 year or less but is revolving in nature, making the offshore loan exceed the term of 1 year.

Dispute Settlement

Law No. 25 of 2007 provides that if there is a dispute between the government and an investor that cannot be settled amicably, the dispute can be settled through arbitration, an alternative dispute settlement forum, or by the courts. Consent for international arbitration is given on a case-by-case basis. As Indonesia is a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award 1958, foreign arbitration awards are enforceable in Indonesia. However, foreign court judgments are not enforceable under Indonesian law.

Administrative law and judicial review principles under Law No. 30 of 2014 on Government Administration (as amended by Law No. 11 of 2020, Law No. 30) require that a government decision must be founded on provisions of a law, regulation and General Principle of Good Governance (GPGG) based on the following principles:

- Legal certainty
- Expediency
- Impartiality
- Accuracy
- No abuse of authority
- Openness
- Public interest
- Good services
- Other general principles to be determined, provided that the principle has been used as a basis for the judge's consideration in a legally binding court decision.

Article 46 of Law No. 30 requires that if a government decision creates an imposition to a party, the authority will inform the relevant party with the legal basis, requirement, documents and relevant facts before implementing that decision. The authority is required to inform the relevant party at least 10 working days before the enactment of the decision (except as regulated otherwise). Law No. 30 also provides an opportunity for a party to object to a government decision to the relevant government institution. If a party does not agree with the result of the objection, the party may make an appeal to the higher authority of the relevant government institution. Furthermore, a party may file a claim to the administrative court if they remain unsatisfied with the result of the appeal.

Foreign investors are not required to exhaust local remedies (in general and state administrative courts) before referring the dispute to international arbitration, with few sector-specific exceptions. For example, Article 154 of Law Number 4/2009 as amended by Law Number 3/2020 and Law Number 11 /2020 on Mineral and Coal Mining, states that any dispute that emerges in the implementation of mining business license and special mining business license shall be settled through court and domestic arbitration in accordance with laws and regulations.

5. INVESTMENT INCENTIVES

Under Article 18 of the Law No. 25 of 2007, the Indonesian government can grant fiscal incentives to investors who expand their business or undertake new capital investment, and fulfil at least one of the stipulated criteria. These criteria include employing a certain number of workers, investing in high-priority areas or in infrastructure development, undertaking tech transfer, R&D or "pioneer industry" (with wide scale application and strategic value to Indonesia), locating in a remote or underdeveloped area, preserving environment, using domestic capital goods or machines or equipment, or making partnerships with micro, small or medium size enterprises or cooperatives.

Article 18 further stipulates that fiscal incentives may be in the form provided in the list below, promulgated in a Regulation of the Minister of Finance:

- Net income tax reduction up to certain level of investment made within certain period;
- Import duty exemption or reduction for imported capital goods, machinery, or equipment domestically unavailable;
- Import duty exemption or reduction for raw materials or supportive materials for production within certain period and meeting certain requirements;
- Value added tax (VAT) exemption or suspension for imported capital goods or machinery or equipment domestically unavailable for production within a certain period;
- Accelerated depreciation or amortization;
- Land and building tax reduction, especially for certain sectors or in certain regions.

Articles 21-24 further provide that the government may grant other non-tax benefits and facilitated services and/or licensing to investors, such as rights over land, immigration service facilities and import license facilities.

The Ministry of Finance has promulgated a number of regulations granting tax incentives to give effect to the provisions of Articles 18-24 of the Law No. 25 of 2007. The incentives are made available to both domestic and foreign investors. The main regulatory framework for tax incentives includes the following:

- Minister of Finance Regulation No. 130/ PMK.010/2020 on Provision on Deduction of Corporate Income Facility (Tax Holiday Facility) (PMK-130).
- Government Regulation No. 78 of 2019 on Tax Facilities for Investments in Certain Business Sectors and/or Certain Areas.
- Law No. 8 of 1983 on Value Added Tax and Sales Tax on Luxury Goods as lastly amended by Law No. 7 of 2021 on Harmonization of Taxation Regulations.
- Government Regulation No. 81 of 2015 on Import and/or Delivery of Certain Strategic Taxable Goods that are Exempted from Value Added Tax, as lastly amended by Government Regulation No. 48 of 2020 (GR 81).
- Law No. 10 of 1995 as lastly amended by Law No. 17 of 2006 on Customs.
- Minister of Finance Regulation No. 176/ PMK.011/2009 as lastly amended by Regulation No. 188/PMK.010/2015 on Exemption of Import Duty for Import of Machine, Goods and Materials for the Purpose of Industry Development or Expansion in the Framework of Capital Investment.

Some examples of tax incentives available under these regulations include tax holidays and corporate income tax reduction for qualifying investments in a pioneer industry, and VAT and custom duty exemptions if services or goods meet certain stipulated criteria. For an overview of pioneer industries, see Box 4.

Box 4. Pioneer Industries under PMK-130

Minister of Finance Regulation No. 130/PMK.010/2020 on Provision on Deduction of Corporate Income Facility (Tax Holiday Facility) lists the following as "pioneer industries" having broad and strategic relevance to the country's economy:

- Upstream basic metal;
- Oil and gas refinery;
- Petrochemicals from oil, gas, or coal;
- Organic basic chemicals from agriculture, plantation, or forestry products;
- Inorganic basic chemicals;
- Pharmaceutical raw materials;
- Irradiation, electro medical, or electrotherapy equipment;
- Main components of electronics or telematics equipment;
- Machinery and main components of machinery;
- Robotics components that support the creation of manufacturing machinery;
- Main components of power plant machinery;
- Motor vehicles and main components of motor vehicles;
- Main components of vessels;
- Main components of trains;
- Main components of aircraft and activities supporting the aerospace industry;
- Agricultural, plantation, or forestry-based processing that produce pulp;
- Economic infrastructure; and
- Digital economy which includes data processing, hosting, and related activities

The Government issued Regulation No. 78 of 2019 provides for the tax allowances available for companies that invest in certain business sectors and/or regions. Criteria for obtaining tax allowances include high investment or exports, large workforce and high local content.

For certain services an incentive is provided in the form of a 0% VAT rate. Export of taxable services is subject to a 10% VAT. However, Minister of Finance Regulation No. 32/ PMK.010/2019 on Limitation of Activities and Type of Taxable Services that Export are Subject to Value Added Tax (MoF Regulation 32) stipulates that the following activities would be subject to a 0% VAT rate if certain requirements are met:

1. Activities related to export of movable goods to be used outside of the customs area;
2. Activities related to immovable goods located outside of the customs area;
3. Activities other than those stated in point 1 and 2, above, whose results are used outside of the customs area, by the following means:
   - i. delivered directly or indirectly, among others by means of mail and electronic means;
   - ii. provision of access to be used outside of the customs area.

The requirements to qualify for 0% VAT are that: (i) the service is based on a written agreement that

clearly states the type of the taxable service, gives details on the activities performed in the customs area to be exported, and the value of the delivery, and (ii) that there is payment made by the service recipient to the exporter, supported by a valid proof of payment. Business activities carried out mainly for export may also enjoy Bonded Zone facilities and the imported goods may be exempted from customs duty, excise and import taxes. Companies having a Bonded Zone license may sell a maximum of 50% — for domestic consumption — of the previous year's export realization value and/or sales value to other Bonded Zone areas.

For both domestic and foreign investment companies there are several regulations that aim to provide financial incentives, for example, reducing production costs by cutting the price of gas and electricity for certain industries. For instance, in the natural gas sector President Regulation No. 40 of 2016 on the Determination of Natural Gas Prices for Certain Industry and Regulation of Minister of Energy and Natural Resources No. 16 of 2016 on the Guidelines for the Determination of Certain Prices and User of Natural Gas allows certain industries using natural gas (for example, steel, ceramics, petrochemical, and so forth) to purchase natural gas at favorable prices. This incentive is subject to, among others, obtaining a recommendation from the Minister of Industry. Similarly, in the electricity sector, Regulation of Minister of Energy and Natural Resources No. 28 of 2016 on Electricity Tariff provided by PT Perusahaan Listrik Negara (Persero) regulates specific tariffs for Industry and for certain special economic zone in Indonesia.

Government Regulation No. 45 of 2019 provides tax incentives to Indonesian companies to: (i) encourage investment in labor intensive industries; (ii) facilitate job creation in Indonesia; (iii) encourage business involvement to develop high quality human resources; (iv) increase competitiveness; and (v) encourage businesses to conduct R&D in the country.

Law No. 39 of 2009 on Special Economic Zones provides incentive for companies that are located in Special Economic Zones. For example, a plot of land may be obtained through a land acquisition for public interest scheme funded by the state or the regional government budget.

There is a centralized database of tax incentives offered to investors in Indonesia, available at the official website of BKPM. In addition, the Indonesian government lists all tax regulations on the official website of the Director General of Tax. However, there is no centralized database of financial incentives available for investors.

Eligibility Criteria and Approval Process

The granting of tax/financial incentives to investors is contingent upon satisfying certain criteria. If the incentive is provided in a published law/regulation, the eligibility criteria are often laid out in the same law /regulation. The approval process for receiving tax/financial incentives is not automatic. Applicants must apply for the incentives through the OSS system prior to commencing commercial activities in the country and the OSS system will notify the investor if the stipulated criteria are met for the incentives. After the investor receives notification that the requirements are fulfilled, the investor must submit the supporting documents through the OSS system. The incentives are granted by the Director General of Tax on behalf of the Minister of Finance in consultation with the BKPM and the ministry in charge of the sector in which the investment is contemplated.

6. INVESTMENT LINKAGES

For the purpose of this section research was focused on availability of incentive schemes to increase local sourcing, technology transfer and measures to improve information exchange between foreign investors and domestic suppliers. Several incentives aim at creating linkages between domestic companies and foreign investors. Article 18(3) of the Law No. 25 of 2007 states that the government may grant incentives to investors if capital investment undertakes technology transfer or if it is in an industry that uses domestic capital goods or machines or equipment. Under Regulation No. 18 of 2015 on Tax Facilities for Investments in Certain Business Sectors and/ or Certain Areas (as amended by Government Regulation No. 9 of 2016), certain tax incentives are available to investors (whether domestic or foreign) for capital investment that has high local content or high absorption of Indonesian manpower. Additionally, some sector specific regulations may require investors to use local content (for example, telecommunication, electricity, mining, oil and gas) or to transfer their technology to their local partner (for example, electricity sector).

7. OUTWARD FOREIGN DIRECT INVESTMENT

For this section, research was focused on whether there are any legal instruments specifically covering outward investment and if there are, whether they impose any restrictions on outward investment. Indonesia does not have an omnibus legislation to regulate Outward Foreign Direct Investment (OFDI) by Indonesian investors overseas. The BKPM is charged with coordinating the investment activities conducted outside Indonesia by local investors. Certain restrictions apply relative to the conversion of the rupiah into foreign currency, as described in Section 4 (Investment Protection).

8. RESPONSIBLE INVESTMENT

For this section, research was focused on whether there are any measures within the country's investment legislation that are specifically targeted to ensure responsible investment. Indonesia has undertaken several measures in the country's investment policy and legal framework to promote responsible investment. None of these measures specifically target foreign investors or foreign investment, and are equally applied to domestic investors. In addition, there are other laws that apply to foreign investors as well, which may serve to preserve the environment and to ensure products produced comply with national and international standards. Notably, Indonesia has undertaken the following measures:

- **Under Law No. 25 of 2007, an investor has the obligation to implement corporate social responsibility.** This obligation includes, among others, imperatives (i) to keep the environment sustainable; (ii) to create workers' safety, health, amenity, and welfare; and (iii) for investors engaged in a nonrenewable natural resource business to allocate funds for location recovery.
- **The requirement to preserve the environment could also be found in the Law No. 32 of 2009 as amended by Omnibus Law ("Environmental Law").** The Environmental Law serves as the main law to supervise of the impact of business activity to the environmental. There is also Law No. 41 of 1999 on Forestry (as lastly amended by Omnibus Law, "Forestry Law") that serves as the main law to supervise the Indonesian's forestry protection and management. Certain industries that have significant impact to environmental and forestry, such as mining, also requires certain environmental-related obligation such as post-reclamation activity.
- **BKPM Regulation No. 5 of 2021 on Guidelines and Procedures for Supervision of the Risk-Based Licensing ("BKPM Reg. 5") requires every investor to be responsible and maintain environmental sustainability.** Under BKPM Reg No. 5 a company that causes environmental damage or harms the safety of the public may be sanctioned by an administrative sanction in the form of the suspension and revocation of the investment license, among others.
- **Under the Indonesian Company Law, companies that manage or utilize natural resources or conduct activities that may have an impact on natural resources must fulfil all relevant social and environmental responsibilities.** The Company Law also requires inclusion of social and environmental responsibility funds in company budgets for all limited liability companies, whether domestic or foreign.
- **Concerning labor conditions, under Law No. 24 of 2011 on Social Security Organizing Body and amended by Law no. 11 of 2020, each person (including foreigners working in Indonesia for at least 6 months) must be enrolled in the social security programs that are administered by the relevant social security organizing body (*Badan Penyelenggara Jaminan Sosial* (BPJS).** An employer has the obligation to enroll its employees into the social security programs. Even a definite period employee is required to be enrolled into the social security programs.
- **Law No. 20 of 2014 on Standardization and Conformity Assessment imposes general requirements for compliance of a product with national standards.** The regulation requires certain products to obtain a Standard Nasional Indonesia (SNI) mark, that is, a sign the product meets the Indonesian National Standard. SNI mark approval is administered by the Indonesian National Bureau of Standards (*Badan Standardisasi Nasional* or BSN). BSN lists certain products that are subject to testing pursuant to standards issued by the BSN. Based on the relevant institution or ministry, there are two types of SNI (depending on the goods): (i) mandatory SNI and (ii) voluntary SNI. Goods that are subject to mandatory SNI should have SNI mark approval before the goods can be used or traded in Indonesia. The technical SNI mark approval process will depend on the relevant institution or ministry that oversees the goods.

9. CITY SPECIFIC REVIEW — JAKARTA

Special Capital Region of Jakarta (*Daerah Khusus Ibukota Jakarta* or DKI Jakarta) is the capital city of Indonesia, and one of the main destinations for foreign investment in Indonesia. The BKPM report for investment value per province in Indonesia for the year 2020 ranks DKI Jakarta as the province with the third biggest investment value (behind West Java having the second place and East Java at the first place, both all of them are on Java island). As the capital city of Indonesia, DKI Jakarta is home to the Government and Ministries' offices, the National Stock Exchange, Bank Indonesia, BKPM's head office. Additionally, most of the major corporations' and financial institutions' headquarters are in DKI Jakarta. This provides better access to foreign investors in DKI Jakarta in terms of coordinating with the relevant government authority regarding the issuance of the licenses or permits that are required for their business activities.

Indonesia recognizes regional autonomy and there is wide law-making authority at the regional levels. Law No. 23 of 2014 on Regional Government stipulates that a law that is enacted at the sub-national level should not conflict with any regulation at a higher (that is, national) level. Thus, for example the regulations issued by the regional government of DKI Jakarta commonly supplement or act as the implementing regulations of the regulations at the national level. Yet regional governments, like the Jakarta regional government can create cumbersome local regulations that hamper the local business climate. For example, additional local content requirements or lengthy procedures to obtain certain licenses that may be time consuming (for example, lengthy procedures to obtain a license to construct or additional reporting requirement of employment welfare) may be imposed.

The Central Government sought to limit such local requirements by annulling problematic bylaws issued by local governments, under a special authority granted under Law No. 23 of 2014 (as amended by Law No. 11 of 2020). However, the Constitutional Court of Indonesia ruled that authority to be unconstitutional. Law No. 23 of 2014 empowers (i) the Governor (head of province), as representative of the Central Government, to annul legislation issued by the Regency/City Government (Regency/City Regulation) and (ii) the Ministry of Home Affairs (MoHA) to annul legislation issued by Provincial Government (Provincial Government Regulation) that would be contrary to the provisions of more authoritative laws and regulations, or contrary to the public order or decency. However, decisions of the Constitutional Court (No. 137/PUU-XIII/2015; No. 56/PUU-XIV/2016) deemed MoHA and the Governor's authority to be unconstitutional. As a result, the Supreme Court remains the only avenue available to review problematic regulations issued by a province, regency or city. Additionally, under Supreme Court Regulation No. 1 of 2011 on Judicial Review at the Supreme Court, the public is not allowed to make oral submissions and the process is solely based on document review.

Furthermore, local regulations are often not easily accessible. There is no single repository of local regulations available in Indonesia. Each local government organizes its own database of regulations. It is usually available under the JDIH platform of that region. For example, Jakarta's JDIH platform is available here. However, the local regulation databases are typically not user-friendly, nor always up to date and complete.

10. FDI IN THE DIGITAL ECONOMY

This section examines Indonesia's legal and regulatory framework impacting investment in digital activities and infrastructure. The first sub-section assesses FDI-specific restrictions that apply to 19 different digital economic sectors or activities (see Table 4). The following sub-sections review a number of legal and regulatory dimensions that may affect both foreign and domestic investments in the digital economy: intellectual property rights, data privacy, data localization, intermediary liability, content access, and e-commerce.

FDI-Specific Restrictions

Indonesia permits foreign direct investment in most key digital economy areas identified in Table 4. Restrictions apply to drones, e-commerce, fintech, healthtech, insurtech, logistichstech, and traveltech. To the extent any of the following digital sectors fall under the "prioritized" sectors of the 2021 Investment List, not only is FDI permitted 100% in such sectors but certain fiscal and non-fiscal invectives are available to investors in these sectors.

Other than equity ceilings listed above, Indonesia has no specific restrictions to FDI in the digital economy. There is no separate screening process for digital FDI. Nor are there any minimum investment requirements or other discriminatory restrictions or quotas or local sourcing requirements specifically for FDI in the digital economy sectors. No special restrictions are placed on the appointment of expatriates on the board of directors or key managerial positions in the digital economy. There is also no specific regulation in respect of work permits for the digital economy sector. Rather, the rules applicable to FDI in the traditional sectors described in the sections above equally apply to FDI in the digital economy.

Intellectual Property Rights

Digital products (such as e-books, digital platforms, downloadable music, digital content, software, and databases, to name a few) are afforded protection under the Copyright Law No. 28 of 2014, as amended. The Copyright Law provides for protection on a range of original works of authorship in the form of literary works (including computer programs), musical works, artistic works, photographs, films or sound recordings, broadcasts, architectural works, applied works and other works in science, art and literature. A copyright owner is granted a bundle of exclusive economic rights to reproduce, display, publish, distribute, adapt, translate, announce, rent, and perform the copyrighted works. The Copyright Law also recognizes authors' and performers' moral rights covering the right of paternity and the right of integrity. Although the Copyright Law does not expressly mention creations made on the Internet or in a digital environment, the copyright rules applied for conventional works in physical media also apply for digital works.

Copyright holders may seek civil and criminal remedies against infringers. A copyright owner whose work is reproduced, disclosed or used in any other illegal or infringing manner may apply to the courts to (i) prevent the entry of suspected infringing goods into commercial trade routes; (ii) withdraw from distribution, confiscate and retain as evidence suspected infringing goods; (iii) secure evidence and prevent the disappearance of evidence by the alleged infringer; and (iv) order cessation of the infringement to stop further loss and damage. Interim and permanent injunctive relief is also available to cease the infringing activities. Criminal remedies for a violation of copyright include fines of up to IDR 4 billion and/or imprisonment for up to 10 years.

The Copyright Law empowers the Minister of Law and Human Rights (MOLHR) and the Minister of Communications and Informatics (MOCI) to coordinate in shutting down electronic systems (information and communication technology media) or contents that disseminate infringing copyright content. Any person who is aware of any activities that infringe copyrights on an electronic system may

Table 4. FDI Equity Restrictions in Indonesia's Digital Economy Sectors

Digital Activity/Sector	FDI Equity Restrictions, if any; "100%" Means No Caps on Foreign Equity
3D Printing	100%
AI and Machine Learning	100%
Big Data & Analytics	100%
Blockchain	100%
Cryptocurrency	100%
Drones	Up to 49%, more subject to approval from Ministry of Defence
E-Commerce	100% (with the exception of e-commerce in certain products/industries reserved for MSMEs, such as food and beverages, tobacco, chemicals, pharmacy, cosmetics, and laboratory equipment; textile, clothes, footwear and personal equipment; household and kitchen equipment)
Fintech	Up to 85% for fintech business activities that involve the facilitation of payment transaction and/or peer-to-peer lending
Gig Worker Platforms	100%
Healthtech	■ 100% for healthtech services (e.g., web portal/digital platform for commercial intermediary services, but not providing healthcare services) ■ Healthcare services allocated to or required to be conducted under a partnership with MSMEs ■ Telemedicine and e-pharmacy services are restricted sectors for investment (both domestic and foreign) under the Ministry of Health Regulation No. 20 of 2019 on Telemedicine between Healthcare Facilities, with restrictions temporarily relaxed during COVID-19
Insurtech	■ 100% for insurtech services (e.g., web portal/digital platform for commercial services, but not providing insurance services) ■ Insurance services are capped at 80% foreign equity under the Government Regulation No. 14 of 2018 on Foreign Ownership on Insurance Companies
IoT Devices	100%
Logisticstech	■ 100% for logisticstech services (e.g., web portal/digital platform for commercial services, but not providing logistics services ■ Logistics services are limited to 49% foreign equity under the Presidential Regulation No. 59 of 2021
Robotics	100%
Social Network Platforms	100%
Cloud computing Infrastructure (e.g. Datacenters)	100%
Telecom Services	100%
Telecom Equipment to Enable Digital Infrastructure and Digital Connectivity	100%
Traveltech	100% traveltech services (e.g., web portal/digital platform for commercial services, but not providing travel or tourism)

Source: Analysis by Kilpatrick Townsend and Stockton based on country's laws and regulations.

submit notification of infringement to the MOLHR for verification and process. The MOLHR will make a recommendation to the MOCI to (i) take down the copyright infringing contents, or (ii) block access to the relevant electronics system.

The Copyright Law does not define "fair use", but it regulates a scope of activities that would not be considered as copyright infringement. These are, among others:

- Publishing, distributing, communicating, and/or duplicating the national emblem and/or anthem so long as it is the same as the original version;
- Publishing, distributing, communicating, and/or duplicating anything performed by or under the name of government, unless it is protected by prevailing laws, or there is a statement made on such copyrighted works or when such copyrighted works are published, distributed, communicated, and/or duplicated;
- Taking the actual news, either in whole or parts, from the news agencies, broadcasting institutions, and newspapers or any other similar sources, provided that the sources are completely mentioned;
- Creating or disseminating copyright content through information technology and communications media that is intended for non-commercial purpose and/or benefit for the creator or related party, or the creator declares that he/she does not object to such creation and dissemination actions;
- Duplicating, publishing, and/or distributing the portraits of the president, vice president, ex-president, ex-vice president, national hero, the leader of national institution, the leader of ministry/government institution, and/or the head of region so long as it respects their dignity in accordance with the prevailing laws;
- Using, taking, duplicating, and/or modifying a copyrighted work and/or neighbouring right product in whole or for substantial parts only cannot be deemed as a copyright infringement if the source is completely mentioned, and it is for the following purposes:
    - Education, research, scientific writing, report, critic, or review so long as it does not harm the reasonable interest of the creator or copyright holder;
    - Security and governance, legislative, as well as dispute resolution affairs;
    - Lecture, that is intended for education and scientific purposes;
    - Show that is free of charge, so long as it does not harm the reasonable interest of the creator.
- Modifying architectural works so long as it is conducted based on technical performance consideration.
- Duplication (1 copy only) or adaptation of computer program conducted by the user, so long as it is for:
    - Research and development of such computer program;
    - Archive and backup of a legally purchased computer program in order to prevent any loss, damage, or unusable.
- Duplicating a published copyrighted work for personal purpose can only be made once and done without the consent of the creator or copyright holder. However, this does not include:
    - Architectural works in the form of buildings or other construction forms;
    - Entire or substantial parts of a book or music sheet;
    - Entire or substantial parts of digital database;
    - Computer program, unless it is for the use mentioned above.
    - Duplication that is intended for personal purpose, but it causes loss and/or damage to the creator or copyright holder.

Trade secrets are granted statutory protection pursuant to Law No. 30 of 2000 if the relevant information is confidential in nature, has economic value and maintained its confidentiality

through appropriate efforts by its proprietor. No specific provisions pertaining to compensation claim and/or injunction are provided for in the trade secret law. However, it does provide for criminal punishment in relation to trade secret infringement with up to 2 years imprisonment and/or a fine up to IDR 300 million.

While Indonesia's IP protection laws are generally at par with international standards, the enforcement of IP rights in the country is weak. Concerns include widespread online piracy and counterfeiting and, in particular, the lack of enforcement against counterfeit products.

Data Privacy

Indonesia does not have an omnibus data protection law. However, personal data protection rules are set out in sectoral laws and regulations, which include:

- Law No. 23 of 2006, as amended by Law No. 24 of 2013 on Demographic Administration
- Law No. 11 of 2008 on Electronic Information and Transactions, dated 21 April 2008, as amended by Law No. 19 of 2016, dated 25 November 2016 **("EIT Law")**
- Government Regulation No. 71 of 2019 on the Application of Electronic Transactions and Systems, dated 4 October 2019, **("GR 71/2019")**, which amended Government Regulation No. 82 of 2012 Concerning Electronic System and Transaction Operation
- Minister of Communications and Informatics **("MOCI")** Regulation No. 5 of 2020 on Private Electronic System Providers, dated 24 November 2020, as amended by MOCI Regulation No. 10 of 2021, dated 21 May 2021 ("Private ESP Regulation")
- MOCI Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems **("PDP Regulation")**
- Ministry of Health Regulation No. 269/MENKES/PER/III/2008 on Medical Records
- Bank of Indonesia Regulation No. 22/20/PBI/2020 regarding Protection of Bank Indonesia Consumers

These regulations set out obligations for electronic system providers when they handle personal data, including security and confidentiality obligations.

There is no general regulatory authority that is specifically responsible for protecting personal data and ensuring compliance with data protection laws. However, MOCI is usually responsible for administering and enforcing regulations related to personal data protection. Sector-specific authorities such as Bank of Indonesia and Ministry of Health supervise data protection compliances in their respective sectors.

A general rule across these regulations is that consent of the data subject is required for the collection, processing, and use of their personal information and the use of such information must be in accordance with prior stated purposes. By regulation, consent is considered valid if obtained in an explicit manner. Although the regulator has not provided any guidelines on what "explicit manner" means, based on practice this would include an affirmative action by the data subjects. The GR 71/2019 also stipulates among other things that data processing may be carried out without consent of the data subject in order to fulfill:

- Legal obligations of the parties in accordance with statutory provisions;
- Vital interests of the data subject; and
- Legitimate interests of the parties.

There is also no requirement to conduct data privacy impact assessments.

Personal data must be retained for at least 5 years, unless determined otherwise by sector-specific laws and regulations. For example, the e-commerce sector regulation requires e-commerce providers to retain transaction data and non-transaction data for at least 10 years and 5 years respectively.

Based on the Private ESP Regulation, the government institutions and/or law enforcement agencies have the right to access personal data that is collected and stored by private ESPs for regulatory monitoring and law enforcement purposes.

The regulations do not provide for a specific right to be forgotten but data subjects have the right to request erasure of their personal information, in addition to the right of access to data, right to rectification of errors, right to object processing, right to restrict processing, right to withdraw consent, right to object to marketing, right to data portability, and the right to complain to MOCI for data protection violations.

Administrative and criminal sanctions apply to any processing of personal data (including transfer) without prior consent of the data subject. The administrative sanctions are in the form of:

- Verbal reprimands
- Written reprimands
- Administrative fines
- Suspension of activities
- Access-blocking
- Removal from the list of registered electronic system providers
- Announcement in the online website

Criminal sanctions are in the form of imprisonment up to 8 years and/or fines up to IDR 2 billion.

In 2020, a draft of the Personal Data Protection Act (PDP Bill) was introduced in the Indonesian House of Representatives for deliberation. The PDP Bill, if enacted into law, would result in the first comprehensive law in Indonesia that specifically deals with the protection of personal data, particularly data in the control of private entities.

The PDP Bill distinguishes between general and specific data (such as health, financial, biometric data) but does not differentiate processing requirements for these two types of data. It follows the GDPR approach in identifying roles of data controller and data processor, and grants numerous rights to data subjects along the lines of the GDPR, such as right of access, right to rectification, right to erasure, right to data portability and right to object.

Data controllers and processors are obligated to appoint data protection officers if they process personal data for providing public services or if their main activities require regular and systematic monitoring of personal data on a large scale, or processing of specific data on a large scale.

Violations are subject to administrative penalties (such as warning, suspension of processing data, compensation and administrative fines) and criminal penalties of up to IDR 70 billion and/or imprisonment of up to 7 years, or both, and more severe fines of up to IDR 210 billion for corporations.

Data Localization

General data localization requirements apply to public, but not to private electronic system providers. Before 2019, Indonesia had strict data localization requirements that required electronic system providers (ESPs) providing public services to have data centers and disaster recovery centers in Indonesia as part of a business continuity plan. These requirements were significantly relaxed in 2019 by limiting the application to public ESPs which are public bodies and entities that are operating electronic systems on their behalf. Pursuant to GR 71/2019, public ESPs (e.g., government institutions) can only manage, process and/or store personal data outside of the Indonesian territory upon approval from the Minister of Communications and Informatics. Private ESPs, however, are permitted to manage, process and/or store personal data offshore, provided that they can ensure that the data are accessible to the relevant authorities in Indonesia for supervisory and law enforcement purposes.

Additionally, data localization requirements may apply depending on the type of services provided by the ESP. For example, in the banking sector under the Financial Services Authority (OJK) Regulation 13/2020, commercial banks are not allowed to store data outside Indonesia, unless it has obtained the prior written approval from OJK.

ESPs need to comply with several requirements before making cross-border data transfers. GR 71/2019 permits electronic system providers to

transfer data offshore provided the data subject's consent is obtained for the transfer and the providers comply with their obligations in the regulation. Furthermore, under the PDP Regulation, such consent must be in Bahasa Indonesia (or in bilingual format) and collected online or by paper. Electronic system providers (other than state administrative agencies) can store or process all types of data outside Indonesia. All cross-border personal data transfer must be reported to the MOCI and such report must contain information on:

- Destination of the transfer;
- Name of the recipient;
- Date when the cross-border personal data transfer will be conducted; and
- Purpose of the cross-border personal data transfer.

After the cross-border personal data transfer is conducted, the transferring party must file another report to the MOCI on the implementation of the cross-border personal data transfer.

The draft Personal Data Protection Act (PDP Bill) further regulates cross-border transfer. Under the PDP Bill, transfer is allowed in four circumstances:

- To recipient countries or international organizations that have data protections equal to or higher than in Indonesia;
- If there is an international treaty between Indonesia and the recipient jurisdiction allowing for data transfer between the two jurisdictions
- If there is a data transfer agreement between the transferor and transferee with adequate data protection obligations equivalent to those provided for in the PDP Bill; or
- Upon consent of the data subject.

Intermediary Liability

Intermediary liability of private sector electronic system providers is addressed under a number of legal instruments: Law No. 11 of 2008 on Electronic Information and Transactions (as amended by Law No. 19 of 2016) (EIT Law), MOCI Circular Letter No. 5 of 2016 on Limitations and Responsibilities of User Generated Content Platform Providers and Merchant Trading through E-Commerce (MOCI Circular), and MOCI Regulation No. 5 of 2020 on Private Electronic System Providers, effective as of November 24, 2020 as amended by MOCI Regulation No. 10 of 2021, dated 21 May 2021 (Private ESP Regulation).

Pursuant to the EIT Law (Article 15) an electronic system provider is responsible for the operation of its electronic system and to maintain a reliable and secure electronic system, and is legally responsible for providing the electronic system except in compelling circumstances involving fault or negligence of users. The MOCI Circular, a set of non-binding rules issued in 2016 for electronic systems providers, states the scope of responsibility for an electronic system to implement its system and manage all content reliably, safely and responsibly, and exempts an electronic system provider from liability if it complies with the terms of service by clearly stipulating that users are responsible for their uploaded content, or in the event of force majeure, or errors or negligence of users. In line with Article 5 of the GR 71/2019, the Private ESP Regulation requires an electronic system provider to ensure that its electronic system does not contain any illegal content and the ESP does not facilitate the dissemination of such content. This implies an obligation to monitor content. Illegal content includes content that is in violation of laws and regulations, causes anxiety for society and disturbs public order based on the government's assessment, or posts or provides access to content related to terrorism or pornography. Under Art. 11 of the Private ESP Regulation, a "User Generated Content" ESP (defined as an ESP "in the Private Sector of which the provision, presentation, uploading, and/or exchange of Electronic Information and/or Electronic Document is conducted by Users") may avoid liability for hosting user generated content on its systems if the ESP:

- Implements a proper governance document for handling electronic information (such as the rights and obligations of users in using the services and the rights and obligations of the provider in operating the electronic system, and

responsibility of users for uploading content) and provides a channel for customer complaints;

- Discloses information of the users who have uploaded or made available illegal content to the relevant authorities for law enforcement and supervisory purposes; and
- Establishes a system to take down any illegal content found within their system (see further below).

Government Regulation No. 80 of 2019 on Trade through Electronic Systems ("GR 80/2019") also provides "safe harbor" or exemption from liability to intermediary services operators for illegal content on their electronic systems or platforms. Pursuant to GR 80/2019, liability is exempted if an intermediary:

- Merely acts as a conduit of the information;
- Stores such information temporarily for the sole purpose of streamlining communications;
- Provides information storage space services (hosting); or
- Acts as search engine.

The Private ESP Regulation provides for a notice and takedown that allows other government agencies but not private actors to make notices. ESPs are obligated to take down or block prohibited content on their electronic system upon becoming aware, within 24 hours after receiving a warning from MOCI, or within 4 hours of such notice for urgent prohibited content that threatens public order or morality such as child pornography content, terrorism content and content that causes public unrest. A private actor may file a complaint with MOCI with a takedown request against the ESP. MOCI may investigate such claim and based on it issue a takedown notice to the ESP.

ESPs are obligated to ensure the accuracy of the personal data that they are collecting and/or processing.

Penalties for violations include administrative sanctions in the form of warning letters, temporary suspensions, revocation of business license, fines, and blocking of access to the ESP's electronic systems in Indonesia.

Content Access

MOCI Regulation No. 5 of 2020 on Private Electronic System Providers requires all private electronic systems operators, including electronic systems operated by foreign entities, to register with MOCI and agree to provide law enforcement officials access to their systems and data. The electronic system operators are broadly defined to include social media and other content-sharing platforms, digital marketplaces, search engines, financial services, data processing services, and communications services providing messaging, video calls, or games. Illegal content is also broadly defined in the regulation and MOCI is empowered to take down or block any illegal content on electronic systems in Indonesia. For example, any content depicting pornography or facilitating gambling can be directly taken down by MOCI via MOCI's IT infrastructure. MOCI can also block or remove illegal fintech apps in an app store to stop users from downloading and installing such apps. These powers are based on the EIT Law and its implementing regulations that prohibit distributions of illegal contents in the electronic systems.

With regard to political contents, MOCI has invoked the Decree of Provisional People's Consultative Assembly No XXV/MPRS/1966 of 1996 on Dissolution of The Communist Party of Indonesia, Declaration as a Prohibited Organization in the Entire Territory of the Republic of Indonesia or the Indonesian Communist Party and Prohibition of Any Activity to Spread or Develop Communist/Marxism-Leninism Understanding or Teachings ("Decree XXV") in enforcing takedown against any content relating to the communist party, including symbol, flag and other paraphernalia.

E-Commerce

E-commerce in Indonesia is regulated by the following laws and implementing regulations mainly based on consumer protection principles:

- Government Regulation No. 80 of 2019 on Trade through Electronic Systems ("GR 80/2019")
- Ministry of Trade Regulation No. 50 of 2020 on the Provisions on Business Licensing,

Advertising, Guidance, and Supervision of Businesses in Trade through Electronic Systems ("MOT Reg 50/2020")

- MOCI Regulation No. 20 of 2016 on Personal Data Protection in Electronic Systems (PDP Regulation)
- Law No. 7 of 2014 on Trade
- Law No. 8 of 1999 on Consumer Protection
- Law No. 11 of 2008 on Electronic Information and Transactions, dated 21 April 2008, as amended by Law No. 19 of 2016, dated 25 November 2016 ("EIT Law")
- Government Regulation No. 71 of 2019 on the Application of Electronic Transactions and Systems, dated 4 October 2019, ("GR 71/2019"), which amended Government Regulation No. 82 of 2012 Concerning Electronic System and Transaction Operation
- Bank Indonesia (BI) Regulation No. 20/6/PBI/2018 on Electronic Money (E-Money Regulation)
- BI Regulation No. 18/40/PBI/2016 regarding Payment Transaction Processing Operations (BI Reg 18/2016)

The main official authority for regulating e-commerce is the Ministry of Trade (MOT).

GR 80/2019 classifies e-commerce business actors in three categories:

- **Merchants** — These are business actors who conduct e-commerce activities for commercial purposes either through their own electronic system or through an electronic system provided by an e-commerce operator.
- **E-commerce operators** — These are business actors who provide a service or electronic system to facilitate an e-commerce transaction (e.g., online marketplace, online classified ads, online retail)
- **Intermediary service operators** — These are business actors who provide intermediary or indirect services to support e-commerce activities (e.g., social media companies, hosting providers, caching providers, search engine companies).

E-commerce business actors are required to obtain a license through the OSS system to carry out e-commerce activities, with an exception for intermediary service operators that are not direct beneficiaries of e-commerce transactions or are not directly involved in an e-commerce contractual relationship. The regulation imposes certain compliance obligations on e-commerce business actors, which include:

- Prioritizing the use of an Indonesian domain name (e.g., .id)
- Using server equipment housed in a data center which complies with prevailing laws and regulations
- Registering as an electronic system operator with the Ministry of Communication and Informatics
- Submitting periodical data and/or information to the statistics bureau
- Maintaining data and retaining data for a specific period (financial transactions data for 10 years and other data for 5 years)
- Removing negative content from their electronic systems upon becoming aware, otherwise e-commerce business actors are liable for negative content on their platforms
- Providing and keeping valid evidence of e-commerce transactions
- Complying with prevailing laws and regulations (e.g., consumer protection laws, advertising code)
    - MOT Reg 50/2020 provides that electronic advertisement broadcasts must:
        - Comply with the advertising code of ethics;
        - Not deceive consumers regarding the quality, quantity, materials, usage and price of the goods/services, and the time

that the goods/services will be received by consumers;

- Not provide misleading guarantees or warranties on the goods/services;
- Not contain any misleading, false, or inaccurate information on the goods/ services;
- Provide information on the risks of using the goods/services;
- Not exploit any event or individual without the authorization or approval of such individual; g. provide an exit function for the broadcasted electronic advertisement (through a "close" or "skip" sign placed in an area in the advertisement that is easily seen and accessible to the consumer)

- MoTR 50/2020 also requires e-commerce business actors to assist government programs by prioritizing trade in domestically produced goods and services, increasing competitiveness of domestic products and services, and domestic e-commerce business actors are required to provide promotional space for domestically produced goods and services.

Electronic contracts addressed to Indonesian consumers must use the Indonesian language. GR 80/2019 also stipulates that personal data cannot be transferred offshore, unless the recipient country is deemed by the Ministry of Trade (MOT) as having the same level of personal data standards and protection as Indonesia. To date, MOT has not issued the list of such countries.

Under MOT Reg 50/2020, a foreign e-commerce business actor is required to appoint a representative domiciled in Indonesia that is authorized to act on its behalf if it has:

- Conducted transactions with more than one thousand (1,000) consumers within a year; and/ or
- Delivered more than one thousand (1,000) packages to consumers within a year

MOCI strictly requires electronic system providers, including those that facilitate electronic payment systems, to register with MOCI. Electronic system providers that facilitate the use of electronic payment systems, including e-wallets, must also obtain a license from Indonesian's central bank, BI.

Non-compliance with GR 80/2019 subjects the offending e-commerce business actors to administrative sanctions in the form of warning letters, inclusion in a list of prioritized monitoring, inclusion in a black list, temporary suspension of services of e-commerce operators, or revocation of business license. Criminal sanctions for noncompliance include up to 2 years of imprisonment and a fine of up to IDR 500 million.

Indonesia has not implemented the UNCITRAL model laws on e-commerce and e-signature. However, it has adopted some aspects under each model laws in its e-commerce laws and regulations. For example, under the EIT Law, there are similarities of rules regarding e-signature.

There are no restrictions on online sales per se; however, the online sales of regulated products (e.g., drugs or medicine that requires a specific prescription) require regulatory approvals.

ENDNOTES

[1] The WTO services sectoral classification list (W/120) is a comprehensive list of services sectors and sub-sectors covered under the GATS. It was compiled by the WTO in July 1991 and its purpose was to facilitate the Uruguay Round negotiations, ensuring cross-country comparability and consistency of the commitments undertaken. The 160 sub-sectors are defined as aggregate of the more detailed categories contained in the United Nations provisional Central Product Classification (CPC). The list can be accessed under the following link: http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc.

Services are categorized into 12 sectors:

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services
12. Other services not included elsewhere

[2] For the purposes of this research, the following 32 sectors have been identified. This is not an exhaustive list of all sectors of the economy.

Primary:	**Services:**
1. Agriculture, Hunting, Forestry, and Fishing	18. Electricity, Gas, and Water
2. Mining, Quarrying, and Petroleum	19. Alternative Energy
Manufacturing:	20. Construction
3. Agroprocessing, Food Products, and Beverages	21. Wholesale and Retail Trade
4. Textiles, Apparel, and Leather	22. Hotels and Restaurants
5. Chemicals and Chemical Products	23. Other Travel and Tourism-related Services
6. Rubber	24. Logistics, Transport, and Storage
7. Plastic Products	25. Telecommunications
8. Pharmaceuticals, Biotechnology, and Medical Devices	26. Computer and Software Services
9. Metals and metal products	27. Financial Services including Insurance
10. Non-metal mineral products	28. Real Estate
11. Wood and wood products (other than Furniture)	29. Business Services
12. Furniture	30. Professional, Scientific and Technical Services (Engineering, Architecture, and so forth)
13. Paper and paper products	31. Health Services
14. Printing and publishing	32. Media and Entertainment
15. Automobiles, Other Motor Vehicles, and Transport Equipment	
16. Information Technology and Telecommunications Equipment	
17. Machinery and Electrical and Electronic Equipment and Components	

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3. Law No. 12 of 2011 on Formation of Laws and Regulations (as amended by Law No. 15 of 2019)
4. Law No. 3 of 2014 on Industry (as amended by Law No. 11 of 2020 on Job Creation)
5. Government Regulation No. 142 of 2015 on Industry Zone
6. Presidential Regulation No. 10 of 2021 on Investment Business Sector (as amended by Presidential Regulation No. 49 of 2021)
7. President Regulation No. 64 of 2021 on Investment Coordinating Board
8. President Regulation No. 33 of 2012 on National Documentation Network and Legal Information
9. Government Regulation No. 5 of 2021 on Implementation of Risk-Based Business Licenses
10. Investment Coordinating Board Regulation No. 4 of 2021 on Guidelines and Procedures for Risk-Based Business Licensing and Investment Facilities
11. Ministry of Employment Regulation No. 8 of 2021 on Procedures of Utilization of Foreign Workers
12. Ministry of Employment Decree No. 349 of 2019 on Certain Positions that are Prohibited to be held by Foreign Workers
13. Law No. 30 of 2014 on Government Administration (as amended by Omnibus Law)
14. Law No. 39 of 1999 on Human Rights
15. Law No. 40 of 2008 on the Eradication of Race and Ethnical Discrimination
16. Law No. 13 of 2003 on Labor (as amended by Omnibus Law)
17. Law No. 19 of 2003 on State Owned Enterprises (as amended by Omnibus Law)
18. Law No. 24 of 2011 on Social Security Organizing Body (as amended by Omnibus Law)
19. Law No. 20 of 2014 on Standardization and Conformity Assessment
20. Law No. 23 of 2014 on Regional Government (as lastly amended by Omnibus Law)
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28. Bank Indonesia Regulation No. 16/21/PBI/2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations (as amended by Bank Indonesia Regulation No. 18/4/PBI/2016)

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30. Bank Indonesia Circular Letter 17/18/DKEM of 2015 on amendment of Bank Indonesia Circular Letter No. 16/24/DKEM of 2014 on the Implementation of Prudential Principles in Managing Offshore Borrowings by Non-Bank Corporations

31. Bank Indonesia Regulation No. 16/10/PBI/2014 on Receiving Foreign Currency From Export Revenue and Withdrawal of Offshore Loan (as amended by Bank Indonesia Regulation No. 17/23/PBI/2015)

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35. ILO Convention No. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value (by virtue of Law No. 80 of 1957)

36. ILO Convention on the Elimination of All Forms of Discrimination against Women (by virtue of Law No. 7 of 1984)

37. ILO Convention No. 111 on Discrimination in respect of Employment and Occupation (by virtue of Law No. 21 of 1999)

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41. Government Regulation No. 81 of 2015 on Import and/or Delivery of Certain Strategic Taxable Goods that are Exempted from Value Added Tax (as amended by Government Regulation No. 48 of 2015)

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45. Ministry of Employment Decree No. 40 of 2012 on Positions That Are Prohibited for Foreign Workers

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Secondary Sources

61. Frequently Asked Question on Investment issued by Investment Coordinating Board

This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of December 31, 2021, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries: Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

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