



INDONESIA INVESTMENT UPDATES - A SNAPSHOT OF THE INVESTMENT LAWS AND REGULATIONS OF INDONESIA, WITH A PARTICULAR FOCUS ON THOSE APPLICABLE TO FOREIGN INVESTMENTS IN THE FOOD AND BEVERAGE INDUSTRY

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This article is the first in CNPUpdate's new Indonesia Investment Updates series and aims to provide you with a general overview and the laws and regulations governing foreign investments into Indonesia.

Introduction

A successful but hitherto principally agrarian nation, the Republic of Indonesia has enjoyed substantial growth in terms of GDP under the helm of President Joko Widodo at 5.0% in 2016, 5.1% in 2017, and 5.2% in 2018. The business, financial, and political press have expressed confidence in the prospects of the republic ever since Jokowi first assumed the presidency in 2014. Having been re-elected in April 2019, President Joko Widodo has obtained the archipelago's mandate to develop the urban and digital infrastructure necessary to ensure that Southeast Asia's largest economy is poised to capitalise on the disruption brought about by the fourth industrial revolution.

The peoples' approval of Jokowi's *Indonesia Maju* has likewise been met with much optimism. A central platform within *Indonesia Maju*, the digital and urban infrastructure envisioned by Jokowi can only be achieved with the assistance of foreign direct investments,

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which have constituted the majority of realised investments into Indonesia for some time. Singapore leads the pack as the biggest single source of foreign direct investment into Indonesia since 2012 (coming second only once, to Japan, in 2013). The Indonesian government's continued efforts to promote investment inflows from Singapore should, therefore, come as no surprise, and this article provides you with a brief overview of the ways in which you can invest in Indonesia, with a particular focus on the food and beverage industry.

What are the key requirements and restrictions prescribed by the general laws and regulations which govern foreign investments in Indonesia?

Indonesian Investment Law: Foreign investments are regulated by Law No. 25 of 2007 on Capital Investments ("**Indonesian Investment Law**"), which prescribes, amongst other things, how foreign investments can and are to be made and the rights and liabilities that foreign investors have under Indonesian law. Pertinently, article 5(2) of Indonesian Investment Law requires any foreign investment to be in the form of a limited liability company incorporated under Indonesian law, namely, a PT PMA.

BKPM Regulations: The regulations promulgated by the Investment Coordinating Board of Indonesia (also known as "**BKPM**") prescribe, amongst other things, the minimum investment required of foreign investors. BKPM regulations presently require foreign investors to invest more than Rp. 10 billion into Indonesia. This Rp. 10 billion excludes the value of any investment in land and buildings and must be realised within 1 year of the PT PMA obtaining a business licence (*Izin Usaha* or "**IU**"). Monies injected into the PT PMA to capitalise the issued and paid-up shares of the PT PMA count towards the minimum investment amount prescribed by BKPM regulations, and these regulations require PT PMAs to have a minimum paid-up capital of Rp. 2.5 billion. In comparison, limited liability companies that are wholly-owned by Indonesian individuals or entities have a minimum authorised capital requirement of only Rp. 50 million, of which 25% must be paid-up.

BKPM regulations also provide that the percentage of a shareholder's shareholding in the PT PMA will be calculated with reference to the nominal value of their shares, and require each shareholder to hold shares worth at least Rp. 10 million in nominal value.

The Negative List: Presidential Regulation No. 44 of 2016 concerning Business Fields that are Closed to and Business Fields that are Open with Conditions to Investment (the "**Negative List**") prescribes what business sectors foreign investors can invest in, and whether there is any limit and/or condition attached. The Negative List has undergone numerous amendments ever since it was first promulgated to encourage investment inflows into the

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island nation. The Negative List identifies business fields and sectors by a brief title, followed by a “**KBLI**” number.

Under the previous version of the negative list, foreign investments into the food and beverage industry in Indonesia were limited to 49% and 51% of the total capital ownership of a PT PMA. The food and beverage industry has since been liberalised under the 2016 version of the Negative List, and the restrictions under the previous negative list in relation to restaurants, catering services, bars, and cafes have been completely removed. Thus, foreign investors can now enjoy 100% capital ownership in PT PMAs which operate restaurants, catering services, bars, and cafes.

Other licences and permits: Foreign investors should also note that apart from the regular company permits and licenses, certain business activities require industry-specific permits and licenses. For example, PT PMAs involved in the processing of raw materials and manufacturing must hold an industrial business license (*Izin Usaha Industri* or “**IUI**”), whilst PT PMAs which operate food stalls or restaurants must obtain a tourism business registration certificate (*Tanda Daftar Usaha Pariwisata* or “**TDUP**”), a health certificate (*Sertifikat Laik Sehat* or “**SLS**”), and, for certain food ingredients, an import license (*Angka Pengenal Importir* or “**API**”).

How can I expand my food and beverage business into Indonesia?

Depending on the degree to which you intend to control and manage the business and its operations in Indonesia, you have the option of (in descending order of control):

- Opening and operating your own wholly-owned business via, or collaborating with a local Indonesian partner to establish and run, a PT PMA company;
- Franchising – this requires you to register your brand as a franchise with the Ministry of Trade; and
- Licensing – as an alternative mode if you do not qualify as an approved franchisor. However, this comes with less control over the management and operation of the business in Indonesia.

Wholly-owned or joint venture PT PMA: As noted above, foreign investors can now enjoy up to 100% capital ownership in PT PMAs which operate restaurants, catering services, bars, and cafes. You therefore have the option of incorporating a PT PMA in which you or your holding company are the sole ultimate beneficial owner. Note however, that as Indonesian law requires each company to have at least 2 shareholders, it may be necessary for you to incorporate a holding company to serve as the required second shareholder. There is no

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restriction against you being the ultimate beneficial owner of 100% of the second shareholder and of the PT PMA, provided that the PT PMA is engaged in a line of business that is 100% open to foreign investment. The minimum investment amount of Rp. 10 billion, and the requirement to realise the said investment within 1 year from the PT PMA obtaining an IU, apply.

Should you wish to collaborate with a local Indonesian partner, you can establish a PT PMA in which you hold a majority or minority interest, and the PT PMA will serve as the vehicle to operate the business. This structure should be properly documented with a joint venture cum shareholders' agreement, coupled with a licensing agreement and a technical assistance agreement. Structuring and documenting a joint venture PT PMA in this way ensures that you retain ownership of your brand whilst allowing you to delegate the day-to-day management of the business to your local Indonesian partner and capitalise on their localised knowledge, expertise, and resources as you focus on the strategic and other aspects of the business and its expansion.

Franchising: As an alternative to incorporating and operating a wholly-owned PT PMA, you have the option of registering a franchise in Indonesia. Unlike in Singapore, where franchising is not regulated by specific legislation, franchising is regulated in Indonesia by the Ministry of Trade. When considering this option, take note of:

- Government Regulation No. 42 of 2007 on Franchises ("**Government Regulation 42**"); and
- Regulation of the Minister of Trade No. 53/M-DAG/PER/8/2012 on the Implementation of Franchising ("**MOT Regulation 53**") as amended by Regulation of the Minister of Trade No. 57/M-DAG/PER/9/2014.

In accordance with Government Regulation 42, prospective franchisors must apply for a franchisor's franchise certificate (*Surat Tanda Pendaftaran Waralaba*, or "**STPW**") from the Ministry of Trade, and their prospective franchisees must likewise apply for a franchisee's franchise certificate from the Ministry of Trade before commencing business operations. To qualify for this certificate, prospective franchisors must:

- have at least five (5) years of prior franchising experience outside of Indonesia;
- have registered the intellectual property (namely, trademark or copyright) relevant to the franchise in Indonesia;
- submit a prospectus meeting the requirements prescribed by law to the Ministry of Trade for its approval and review;
- submit financial statements showing its profitability from the past two (2) years, or an average profitability over the past five (5) years; and
- submit the proposed franchise agreement (in English and Bahasa Indonesia) for

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approval and review.

Each of the prospective franchisor and prospective franchisee must have obtained their respective STPWs prior to signing the franchise agreement. Further, in order to protect local trade, MOT Regulation 53 requires franchisors and franchisees to prioritise the use of domestically produced goods and/or services for at least 80% of the franchise's raw materials, business equipment, and merchandise in Indonesia. The franchised business will also have to prioritize working with small and medium Indonesian enterprises as their franchisees or as their suppliers. Food and beverage businesses are only allowed a maximum of 250 outlets, while convenience stores are only allowed a maximum of 150 outlets. If you are not able to comply with these requirements and restrictions, you may apply for an exemption from the Ministry of Trade.

You should note that you are not allowed to appoint franchisees in which you have an equity interest (directly or indirectly) or whom you are able to directly or indirectly control. Examples of prospective franchisees over whom you will be deemed to have direct or indirect control include your subsidiaries, affiliates, employees, or their family members. Franchising is therefore only suitable if you do not wish to have an equity interest in the franchised business in Indonesia. If you are unable to meet the requirements prescribed above, consider licensing instead.

Licensing: If you are unable to qualify for franchising or find a franchisor's obligations too onerous, you have the option of expanding into Indonesia by licensing your trademark to a local Indonesian company and executing a technical assistance agreement with that company. Licensing is typically less restrictive with fewer requirements; however, opting for licensing will also mean that you as a brand owner will have less control, as compared to franchising, over your local Indonesian partner on how the business is run and managed in Indonesia.

Unlike franchising, there is no track record requirement, no restriction as to whom you may contract with, nor is there a requirement for you to register a prospectus with the relevant ministry before you can proceed to license your brand to a PT PMA. Note also that if the licensing arrangement has the hallmarks of a franchise arrangement, the authorities may deem it an illegal franchise. This may result in sanctions and/or penalties. It is therefore important to ensure that the licensing arrangement is properly documented, and the relevant documents are signed by and enforceable against the relevant parties from the very beginning.

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The way forward – should you establish a PT PMA, license or franchise?

Ultimately, the question of whether you should expand into Indonesia by incorporating a wholly-owned subsidiary, licensing, or franchising your business depends on a number of factors. If you are able to fulfil the minimum investment spending required by BKPM regulations, you may wish to consider incorporating a wholly-owned subsidiary to ensure that you are able to retain full control of the business in Indonesia. You may also establish a joint venture PT PMA if you wish to delegate the management and operation of the business to a local Indonesian partner.

If the requirements imposed by BKPM regulations prove too onerous, you can opt to franchise the business. Franchising does not require the up-front investment of Rp. 10 billion. It does, however, require your brand to have a proven track record, and the regulations specifically prescribe the requirements and restrictions with which you must comply in order to qualify for a franchisor's franchise certificate.

If you do not qualify to register as a franchisor in Indonesia, consider the option of licensing in Indonesia, which has less stringent requirements. In any event, remember to take cognisance of and fully comply with the general requirements imposed by Indonesian laws and regulations in order to ensure that your agreements are fully and readily enforceable in Indonesia. Crucially, ensure that you have registered your trademark in Indonesia and that all agreements that are entered into with Indonesian individuals or entities are executed in the national language (Bahasa Indonesia) as well as English (and provide for the English version to be the governing version).

Conclusion

Home to the world's most populous island with a demographic of over 270 million and ever-growing, it is not difficult to see how opportunity abounds in a melting pot as rich in culture, human capital, and potential growth as Indonesia. The most recent amendments to the Negative List saw the removal of the restriction on key KBLIs under the tourism sector for the food and beverage industry, thereby rendering these KBLIs 100% open to foreign investment.

This update is the first of *Indonesia Investment Updates*, a new series within CNPUpdate aimed at providing you with an overview of the investment laws and regulations of the island nation. Being introductory, this particular update examined Indonesian investment laws and regulations in general and then turned to focus on the food and beverage industry. Subsequent pieces within this series will turn to focus on other industries. We hope that this

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series will be useful to companies and businesses that are considering expansion into Indonesia.

Do note that you may be eligible for grants from Enterprise Singapore for your expansion.

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