

INDONESIAN INVESTMENT UPDATES – A QUICK INTRODUCTION TO INDONESIAN LABOUR LAW

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Introduction

Whether your investment into Indonesia is to take the form of an acquisition or the incorporation of a new joint venture company, Indonesian Labour Law applies and must be complied with. This article provides you with a brief overview of Indonesian Labour Law and how it may apply to you and your investment.

What is the source of Indonesian Employment and Manpower law and how is it relevant to my investment?

The main source of Indonesian Labour Law is Law No 13 of 2003 on Manpower ("**Law 13**").

The relevance of Law 13 to investors cannot be overstated. If you are investing in an Indonesian operating company as opposed to an investment holding company in Indonesia, it goes without saying that that operating company must comply with Law 13 at all times. Law 13 is also particularly relevant if your investment takes place by way of an acquisition as it may have financial and operational implications on the company after completion. Where you are acquiring shares in an Indonesian company and your acquisition results in a **change in control**, the existing employees of the company must be given proper notice of the proposed acquisition prior to its completion, and are deemed to have been terminated by reason of the change of control. The termination is deemed by Law 13 and upon termination the employees are entitled to severance benefits calculated in accordance with the prevailing formula prescribed by law. The company may be excepted from this if the employees have chosen to voluntarily resign from their positions or if the company has provided the employees with an option to continue working at the company post-acquisition and the employees have chosen to exercise this right.

What are the key points to note?

Many aspects of Law 13 are unique when compared to Singapore. For example, in Singapore and many other jurisdictions, companies can choose to enter into contracts of service (namely, employment contracts) or service contracts (relevantly, consultancy contracts). Where contracts of service are concerned companies can also structure these contracts to be for full-time or part-time employment, and for a fixed term or on a permanent basis. In Indonesia Law 13 prescribes a statutory limit on the maximum term of fixed-term contracts (whether expressed as a contract of service or service contract).

Another example is that in Indonesia employees are entitled to unlimited sick leave. Employees are also entitled to a religious holiday allowance, known as 'Tunjangan Hari Raya' or "THR". THR is payable to employees regardless of their religion, although the religion practiced by the employee impacts the date by

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which the employer must make the payment. The THR is a mandatory payment, and companies are obliged to pay this even during the COVID-19 pandemic.

A further example is that termination of employment in Indonesia must generally be for cause. Where termination is without cause and for reasons other than the insolvency, restructuring, or acquisition of the company, the terminated employee is entitled to certain payments under Law 13.

How can I employ foreign employees?

In order to employ a foreign employee, you must apply for the appropriate visa for the foreign employee and the foreign employee must hold the appropriate visa at all times. If the foreign employee is predominantly based overseas but is required to travel to Indonesia occasionally for business purposes, the foreign employee must obtain the relevant business entry visa. If the foreign employee will be working in Indonesia, the foreign employee must obtain a work permit (also known as an “IMTA”) and a residence permit (“KITAS”).

You should also note that although the company’s board of directors and board of commissioners can be comprised of expatriates, the office of the director of human resources must be held by an Indonesian citizen.

Conclusion

Your investment into Indonesia may take the form of an acquisition or newly incorporated company. As long as there is change in control of the Indonesian company, Law 13 applies and must be complied with. We hope that this article has provided you with a useful summary of the potential impact that Law 13 may have on your investment.

If you have any enquiries as to the contents of this update or if you are considering an expansion into Indonesia, please feel free to contact any of the members of our Indonesia Desk, who will be able to guide you accordingly.

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