

indonesia



Bangun Hermawan & Partners

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Contact:	Jonie Aries Bangun
Address:	Bapindo Plaza • Citibank Tower 24th Floor, Jl. JEND Sudirman Kav. 54-55, Jakarta 12190, Indonesia
Email:	jabangun@bplawyers.net

Bangun Hermawan & Partners (BHP) is a general corporate and commercial law firm with a multi-disciplinary practice. The firm was founded by a group of lawyers, who were the former partners of leading Indonesian law firms, and professionals who have long standing experience in dealing with local, regional and International legal and commercial transactions.

All lawyers, paralegals and professionals of BHP fully commit their knowledge, experience and dedication to providing the most effective, efficient and high standard of legal services to meet their clients' expectations, needs and objectives. To face and anticipate the dynamic of the changing global business environment, our firm's members are fully trained to respond and provide quick, active and strategic advisory assistance to the firm's clients.

Our open communication relationship between clients and firm's members will ensure our best services and representation, providing our clients with a

privileged and full access to our members to interact and discuss any legal and commercial issues.

Practice Areas

- Aviation Industry
- Banking and Financial Services
- Capital Markets
- Commercial Litigation, Arbitration and Bankruptcy
- Corporate and Commercial Law
- Foreign Direct Investment
- Information Technology
- Mergers, Acquisitions and Restructuring
- Mining, Oil and Gas
- Plantation and Forestry
- Power and Telecommunications
- Project Finance
- Trademarks and Intellectual Property

indonesia | corporate law

Regulations and Rules

The Indonesian Company Law was issued in March 1995 and stipulates the legal framework for companies. In principle, all companies should now be in compliance with Company Law. Previously businesses were regulated by the provisions of the Indonesian Commercial Code and Indonesian Civil Code. These were drafted in the last century based on the requirements of Dutch Colonial Law.

Corporate Forms

There are a numbers of legal forms of entities engaged in business including:

- Sole trader - proprietor has unlimited liability;
- General partnership (FA or "Firma") - partners have joint and several unlimited liability;
- Limited partnership (CV) - silent partners are liable to the extent of their capital contribution whilst managing partners have unlimited liability;
- State-owned corporation (BUMN) - a company owned by the government;
- Branch of a foreign corporation - foreign companies cannot, in most cases, establish operations in Indonesia through a locally registered branch. Branch registration is permitted in construction, oil and a few other activities;
- Company (Perseroan Terbatas or PT) with limited liability.

The Liability of Shareholders

Under the Indonesian company law, the company's shareholders are not personally liable for any agreements entered into in the name of the Company

and not liable for Company losses exceeding the nominal value of the shares subscribed. A shareholder is however personally liable if it is proven that:

- the requirements for company's existence as a legal entity have not been or is not fulfilled;
- the relevant shareholder either directly or indirectly in bad faith uses the company solely for personal purposes;
- the relevant shareholder is involved in unlawful acts committed by the company;
- the relevant shareholder either directly or indirectly unlawfully uses the company's assets, which causes such company's assets to be inadequate to settle company's debts.

Share Capital

The minimum authorized capital of a Company is Rp. 20.000.000,00 (twenty million Rupiah). At least 25% (twenty five percent) of the authorized capital should be issued and 50% (fifty percent) of the issued capital should be paid up in full at the time of the Company's formal incorporation.

Classes of Shares

The articles of association of the company may establish one or more class of shares. All shares in the same class give their holders the same rights. If there are more than 1 (one) class of shares, the Articles of Association shall stipulate 1 (one) class as common or ordinary shares. However it may stipulate 1 (one) or more classes of shares:

- with special, qualified, limited, or no voting rights;
- which can be revoked or exchanged for shares after a certain period;
- which entitle the holder to receive cumulative or non-cumulative dividends payments;
- which entitle the holder to the receive dividend payments and the remainder of company assets in the case of liquidation, with priority over the holders of other classes of shares.

Shareholders Meetings

The General Meeting of Shareholders (GMS) has all authorities that are not granted to the Board of Directors or Board of Commissioners. The Indonesian company law distinguishes between annual and other or extraordinary GMS. The Board of Directors calls the annual and extraordinary GMS in the interest of the Company. The annual GMS shall be held no later than 6 months after the close of the financial year.

GMS, Quorum and Resolution at Shareholders Meeting

GMS	QUORUM & RESOLUTION
1st call	It is attended by shareholders representing more than 1/2 of the total numbers of shares with valid voting rights
2nd call	It is valid and entitled to pass resolutions if attended by shareholders who together represent at least 1/3 of the total number of shares with valid voting rights
3rd call	If the quorum for the second GMS is not reached, the quorum shall be determined by the Court
1st call for the amendments of the Articles of Association	A resolution shall be valid if attended by shareholders representing at least 2/3 of the total number of shares with valid voting rights and approved by at least 2/3 of the number of votes.
2nd call for the amendments of the Articles of Association	The resolution is valid if shareholders representing at least 2/3 of the total number of shares with valid voting rights are present and the resolution is approved by a majority of those votes.
In the event of a merger, consolidation, acquisition, bankruptcy, and or dissolution of the Company	A resolution of a GMS is valid if attended by shareholders representing at least 3/4 of shares with valid voting rights and approved by at least 3/4 of that number of votes.

Management

The management of the Company shall be carried out by the Board of Directors. A company whose field of business is mobilizing public funds, a company that issues debt instruments, or a public limited liability company, must have a minimum of 2 (two) members of the Board of Directors. Those who are eligible to be appointed as members of the Board of Directors are individuals who are capable of carrying out legal actions and who have never been declared bankrupt or who are not the members of the Board of Directors or the Commissioners responsible for the bankruptcy of another Company, or who have never been punished due to criminal actions causing a loss to the state within 5 (five) years prior to their nomination. Members of the Board of Directors are appointed by the GMS. Members of the Board of Directors are appointed for a fixed period of time and may be re-appointed.

The Company shall have a Board of Commissioners who has the duty to supervise the Board of Directors' policy in the running of the Company and give advice to the Board of Directors.

Annual Report

Within 5 (five) months of the close of the financial year of the company, the Board of Directors shall prepare the annual report for submission to the GMS. The annual report shall be signed by all members of the Board of Directors and Board of Commissioners.

indonesia | foreign investment

Indonesia has been open for foreign investment since 1967 when the Law No. 1 of 1967 concerning Foreign Investment was enacted. Foreign investment in Indonesia is established in the form of direct investment through a joint venture between foreign and Indonesian parties. In certain areas foreign parties may have 100% ownership in a foreign investment company, or a so called a PMA (Penanaman Modal Asing) company.

Registration with Government, Authorities and Permits

Foreign investment rules applicable in Indonesia distinguishes between the following means of investing:

- a) Joint ventures between Indonesian citizens/legal entities and foreign citizens/legal entities; or
- b) Direct investment where the entire capital is owned by foreign citizen/legal entities.

From time to time the Government of Indonesia issues a Negative List of Investment, being the first regulation that should be observed by any party who intends to establish a PMA company. The Negative List contains fields of business that are closed to foreign investment and certain shareholding structures allowed for foreign investors in certain areas.

Currently industries performing a vital function in national defense, among others, the production of arms, ammunition, explosives, and military equipment, are closed to foreign investment. Foreign investment companies which engage in the following fields may hold a maximum 95% of the capital of a PMA company:

- construction and management of ports
- production, transmission and distribution of electric power
- telecommunications, shipping, air transportation, development and management of drinking water
- public trains
- generation of atomic energy
- medical services

Applications for foreign investment authorizations may be submitted by:

- foreign citizens or entities, or PMA companies; or
- foreign citizens or foreign legal entities or PMA companies, together with an Indonesian citizen or legal entity.

To apply for permission for a new investment, applicants must submit an application for PMA approval to the Investment Coordinating Board (Badan Koordinasi Penanaman Modal or BKPM) located in Jakarta, capital city of Indonesia. BKPM functions as the advisor to the President in formulating government policies with respect to investment, processing investment approval as well as supervising the implementation of investments.

There is a special procedure for investment in the field of mining (not applicable to oil and gas). The investment is implemented through a Work Contract or Coal Mining Concession Contract between the applicant and the Minister/Governor/Mayor/Regent. The Work Contract or Coal Mining Concession Contract serves the same function as a foreign investment (PMA) approval.

To implement an investment that has obtained approval, BKPM, acting on behalf of the technical ministries, will issued various licenses, among others, as follows:

- Import duty relief on imported capital goods and raw/supporting materials
- Limited Import License
- Foreign Manpower Plan Approval
- Expatriate Employment Permit (IMTA)
- Industrial License

In addition to the above, local governments (regency or municipality) will issue regional permits, among others, as follows:

- Location Permit
- Building Construction Permit
- Nuisance Act Permit

The foreign investment entity must be incorporated as a limited liability company pursuant to the Indonesian Law. Currently, the establishment of the said limited liability company is stipulated in the Law No. 1 of 1995 concerning Limited Liability Companies. The said company must be domiciled within the territory of the Republic of Indonesia. Business activities of the company may be located anywhere in Indonesian jurisdiction.

Transfer of dividends, interests and royalties abroad

Indonesia does not restrict the transfer of dividends, interest and royalties abroad. Depending on the bilateral tax treaty in force, withholding tax may apply.

Repatriation procedures and restrictions

PMA companies are granted the following tax exemption and levies:

EXEMPTION FROM

- company tax on profits during a specific period no exceeding five years from the moment the enterprise commences production;
- dividend tax on that part of accrued profits paid to shareholders, as long as these profits are earned during a period not exceeding five years from the moment the PMA company commences production;
- company tax on profits which are re-invested in the PMA company, for a specified period not exceeding five years from the time of reinvestment;
- import duties at the time of entry into Indonesia of fixed assets such as machinery, tools or instruments needed for the operation of said PMA company;
- capital stamp duties on the issuance of capital originating from foreign investment.

RELIEF AS FOLLOWS

- in the levy of company tax through a proportional rate of not more than 50% for a period not exceeding five years after expiration of the exemption period as intended by section 1 (a) above;
- by off-setting losses suffered during the period of exemption intended by section 1 (a) above, against profits subject to tax following the period mentioned above.
- by allowing accelerated depreciation of fixed assets.

Capital repatriation is not permitted as long as tax exemption and relief as stipulated above are still in effect.

Foreign Personnel

In order to apply for work permits for their expatriate employees, PMA companies must submit a foreign manpower plan approval application to BKPM. The application must be accompanied by the following:

- Articles of Association of PMA company;
- Descriptions of Organizational Structure of PMA company;
- A copy of the PMA company's labor report.

Foreign personnel must have a Limited Stay Permit Visa (VITAS), issued by the Indonesian Representative Office in the relevant country where the foreign personnel originates. A recommendation letter from BKPM is required in order to enable the Indonesian Representative issuing the relevant VITAS.

PMA companies are further required to submit an application for Limited Stay Permit Card (KITAS) to the relevant Immigration Office.

Following issuance of KITAS, the Head of BKPM will issue Expatriate Employment Permit (IMTA).

indonesia | labor law

The Indonesian Labor Law was enacted in the 2003. This law is a compromise between the employers and employees, even though some of the Labor Unions have submitted an application to the Constitutional Court requesting it to amend several provisions. The Law provides that prior to the termination of an employee, an approval from the Regional Labor Dispute Settlement Committee (P4D) should first be obtained by the employer if negotiation with the employee failed to reach an agreement.

Employment Contracts

CLASSES

Indonesian labor law basically acknowledges two classes of employment contracts: the fixed term contract and the indefinite term contract. The fixed term contract is based on a period of time or completion of a certain job. The contract can only be used for certain jobs which according to their type and characteristics or activities can be completed in a specific period of time. The fixed term contract which fails to meet the requirements provided in the law shall be deemed to be an indefinite term contract.

COST OF DISMISSAL AND WRONGFUL DISMISSAL

Termination of a fixed term contract. If employer terminates the employment relation prior to the expiration of the contract, or if the contract has to be ended for any reasons other than as provided in the law, then the employer is obliged to pay compensation to the worker in the total amount of the worker's wages until the date of expiration of the contract.

Termination of an indefinite term contract. In order to terminate an indefinite term contract, the employer is obliged to pay the dismissed worker severance

pay and/or sum of money as a reward for service rendered during his or her term of employment (“gratuity”), as well as compensation for rights or entitlements.

The compensation shall include: annual leave not yet taken; cost to the worker and his/her family to return to the place where the worker agreed to work; compensation for housing and medical treatment and care at the rate 15 % of the severance pay and/or gratuity (see below); and such other compensation as may be stipulated in the employment contract, company regulations or collective labor agreement. The amount of the severance pay and gratuity will depend on the working period of the worker. The severance pay and gratuity are calculated as follows:

Working period	Severance pay	Working period	Gratuity
Less than 1 year	Wage for 1 month	3 years or more	Wage for 2 months
≥ 1 year < 2 years	Wage for 2 months	≥ 6 years < 9 years	Wage for 3 months
≥ 2 years < 3 years	Wage for 3 months	≥ 9 years < 12 years	Wage for 4 months
≥ 3 years < 4 years	Wage for 4 months	≥ 12 years < 15 years	Wage for 5 months
≥ 4 years < 5 years	Wage for 5 months	≥ 15 years < 18 years	Wage for 6 months
≥ 5 years < 6 years	Wage for 6 months	≥ 18 years < 21 years	Wage for 7 months
≥ 6 years < 7 years	Wage for 7 months	≥ 21 years < 24 years	Wage for 8 months
≥ 7 years < 8 years	Wage for 8 months	≥ 24 years	Wage for 10 months
≥ 8 years	Wage for 9 months		

The law provides that the payment of the severance pay, gratuity, and compensation pay will vary from one worker to another, depending on the reason for dismissal. For example, worker who is dismissed because the worker commits a serious mistake shall have no right on the severance pay and gratuity.

The dismissal procedure must follow various requirements stipulated by law. The illegal dismissal shall be null and void, and consequently the employer shall re-employ the said worker as well as pay the whole wages and rights which should have been received by the employee had he/she not been dismissed.

EMPLOYMENT CONTRACTS FOR DIRECTORS; AN SPECIAL REGIME?

There are no specific regulations on this matter. The Department of Manpower applies specific policy to the status of a director who is also a shareholder of the company.

Employees’ Representatives and Union Representation

BRIEF IDEA OF THE INFLUENCE OF THESE GROUPS IN LABOR CONTRACTS

The law does not provide specific regulations regarding employees’ representatives, however some provisions state that employees can be represented by their representatives to represent their interest.

Under Indonesian Labor Union Law, labor union can be established by the company either inside or outside of the company. The labor union at the company level will act as employees’ representative in negotiating and executing the Collective Labor Agreement.

WHEN DOES LABOR UNION REPRESENTATION BECOMES BINDING?

A Labor Union at the company level can be established by at least 10 (ten) employees of the company. The law allows for the employees to establish more than one labor union at the company level.

RIGHTS AND PRIVILEGES OF A LABOR UNION REPRESENTATION INSIDE A COMPANY

A Labor Union inside a company has the right, among others, to negotiate and execute the Collective Labor Agreement, and to represent employees to settle any dispute in labor matters. Under the law, the employer is obliged to allow the executives or members of the labor union to carry out labor union activities within the working hours which have been agreed or as stipulated in the Collective Labor Agreement. The employer is not allowed to terminate an employment contract based on the fact that the employees establish, become

members and/or executives of a labor union, undertake activities for a labor union outside the working hours or during agreed working hours.

Collective Bargaining Agreements. Other Agreements under National, Regional, Provincial or Company Level

CLASSES

Under Indonesian Labor Law, a Collective Labor Agreement can be made by a registered labor union or labor unions and employer or employers. In one company only one Collective Labor Agreement can be made and it shall apply to all workers employed by the company.

ARE COLLECTIVE LABOR AGREEMENTS BINDING FOR THE LABOR CONTRACTS?

Labor contracts should be in line with the Collective Labor Agreement. In the case of provisions in the labor contract is not in accordance with the collective labor agreement, then the provisions in the labor contract shall be null and void and the provisions in the Collective Labor Agreement shall remain valid.

Wages and Other Types of Compensation (Wages, Social Security Contributions, Remuneration in Kind, Insurance Policies, Pension Plans...)

CLASSES OF WAGES

Wages for the employees shall be denominated in the form of money. The component of the wage can comprise of principal wage and allowance.

MINIMUM SALARY IN 2005

Under Indonesian law, the minimum wage may consist of: (i) the minimum wage by provinces or regencies/cities; and (ii) the minimum wage by sectors in the provinces or regencies/cities. Minimum wage rates are now stipulated by the

Governor on annual basis. Within provinces, the regional minimum wage may vary. For reference, the minimum wage for the Jakarta Province in 2005 is Rp. 711,843/month.

COST OF OVERTIME HOURS

- Overtime worked on a working day is paid for the first overtime hour at a multiple of 1,5, and for the following overtime hours at a multiple of 2.
- Where overtime is worked on a weekend and/or official holiday (on the basis of a 6 day and 40 hour work week), then the payment for the first 7 (seven) overtime hours is multiplied by 2, for the eighth overtime hour is multiplied by 3, and for the eleventh overtime hour is multiplied by 4. In the event that an official holiday falls within the shorter working days, then the payment for the first 5 (five) overtime hours is multiplied by 2, for the sixth overtime hour is multiplied by 3, for the seventh and eighth overtime hour is multiplied by 4.
- Where overtime is worked on a weekend and/or official holiday (on the basis of a 5 day and 40 hour work week), then the payment for the first 8 (eight) overtime hours is multiplied by 2, for the ninth overtime hour is multiplied by 3 and for the tenth overtime hour is multiplied by 4.

Employment Regulations

Indonesian employment regulations are provided in the law on Manpower and several other laws which regulate specific employment issues, such as the law on wage protection. Some of the implementing regulations of the above laws have also been enacted, either by central government or regional governments.

The laws and regulations contain the minimum requirements. The Company Regulations, Collective Bargaining Agreement and individual Labor Contract may contain higher or better requirements than those stipulated in the above laws and regulations.

Social Security

CONTRIBUTION FORMS (TERMS AND PROCEDURES)

The Government just enacted the Law on National Social Security System. Under the law, the employer is required to gradually register itself and its employees with the Social Security Implementing Agency. The implementing regulations of this law are in the course of preparation.

Currently, a company is obliged to participate in a social security program for its employees which is commonly called JAMSOSTEK, and is a state-sponsored employee insurance program. This program consists of: insurance against accidents which occur at the workplace, death, pension, and health treatment. However, the health treatment program is optional, if the employer provides a better program.

The contributions for insurance against accidents which occur at the workplace, death, and health treatment are paid by the employer. The cost of contribution to the pension is borne by employer and employee.

The employer pays the contributions on a monthly basis - and collects the share of the contribution that is borne by the employee by means of a deduction from the employee's wage. Payments are made to the PT. JAMSOSTEK by the 15th day of the relevant month.

SOCIAL SECURITY COSTS FOR THE COMPANY

Insurance against accidents which occur at the workplace. The amount of the contribution will vary depend on the type of business engaged in by the company. For reference, the maximum amount of the contribution is 1.74% of the monthly wage and the minimum is 0.24% of the monthly wage.

Pensions. Contributions are made in the amount of 3.70% of monthly wage.

Life Insurance. Contributions are made in the amount of 0.30% of monthly wage.

Health insurance. For a married employee, contributions are in the amount of 6% of monthly wage, and for single employee, in the amount of 3% of monthly wage. For the purposes of this calculation, the monthly wage not exceed the amount of Rp. 1,000,000.

SOCIAL SECURITY COST FOR THE WORKER

Pensions. The contributions are in the amount of 2% of monthly wage.

Health and Safety

ESSENTIAL DUTIES FOR THE COMPANY

Every worker is entitled to obtain protection with regard to occupational safety and health. Therefore, every company must apply an occupational safety and health management system integrated with the corporate management system.

MAIN REGULATIONS

Basic regulations on health and safety are provided in the Law on Manpower and Law on Occupational Safety as well as their implementing regulations.

Contracting and Outsourcing of Work or Services

The engagement is through fixed term contract as mentioned above. Outsourcing is governed by various provisions of the Labor Law which stipulates that a company can transfer jobs to other companies through an employment agreement or written contract for the provision of labor service. The jobs that can be transferred to other companies must meet certain requirements stipulated in the law (e.g. the jobs must be executed separately from the company's main activities). The law requires that the workers protection and labor requirements in the other companies be either at least the same as workers protection and requirements in the company transferring the jobs, or in accordance with the provisions of laws then in force.

indonesia | real estate

Types of Ownership

Based on The Indonesian Land Law, there are five main forms of title over land:

RIGHTS OF OWNERSHIP (HAK MILIK)

This title is the most comprehensive and complete form of individual rights over land. Only Indonesian citizens and special legal bodies i.e. government banks, cooperatives, religious and social bodies may obtain this title.

RIGHT TO CULTIVATE (HAK GUNA USAHA)

This title gives the holder the right to cultivate or to use state land for agricultural purposes within a certain period of time i.e. 35 years and extendable for another 25 years. This title can only be held by Indonesian citizens, and companies established under Indonesian law and domiciled in Indonesian territory.

RIGHT TO BUILD (HAK GUNA BANGUNAN)

This title gives the holder the right to build and own buildings on the land for a certain period of time, i.e. 30 years, extendable for another 20 years. Indonesian individuals and Indonesian legal entities, including Foreign Capital Investment Companies, may hold this title.

RIGHT OF USE (HAK PAKAI)

This title gives the holder the right to use a part of a parcel of land and obtain the produce from such land. This title can be attached to the state land, or land under right of management and ownership. The period to hold this title is 25 years and extendable for another 20 years. Indonesian citizens, resident

foreigners, Indonesian companies domiciled in Indonesia, and foreign companies that have a representative office in Indonesia may hold this title.

RIGHT OF MANAGEMENT (HAK PENGELOLAAN)

This title is given to state owned enterprises and regional governments for the establishment of government projects, and to be used for industrial and business purposes. The holder has the power to grant a right to build and right of use.

Land Register

Land and the rights attached to it are registered with the National Land Agency (BPN) at the regional level. Registration and maintenance of the land data are conducted by the BPN assisted by Land Officer for Preparation of Land Deed (PPAT).

Transfer Formalities

All transfers of title to land must be by notarial deed made by and before the PPAT authorized by the government to have his or her practice in the area where the land is located. This transfer must be registered in the BPN office.

Secured Rights over Assets

LIEN OVER THE LAND (HAK TANGGUNGAN)

Liens over Land can be granted with respect to land under right of ownership, right to cultivate, and right to build. Liens over Land in Indonesia are established by the execution of a Deed of Grant of Lien made by and before the PPAT. Liens over Land also can apply to the right of use subject to various requirements. Liens over Land grant the holder a preference right for settlement of the debtor's debt.

Acquisition of the Land

Only Indonesian private persons or Indonesian companies have the right to acquire land. A foreigner may acquire land through a joint venture company (PMA). If the land has already been surveyed and certificated, purchase of the land and transfer is a relatively easy procedure. This will be followed by an administrative procedure, namely registration and change of ownership at the BPN assisted by the PPAT.

Special Legal Protection for Parties

Each land transaction is required to be registered at the BPN and must be embodied in a notarial deed made by and before a PPAT. If the two requirements have been met by the parties the law will automatically protect the rights of the new owner.

Construction and Restrictions as to Use

All building, from private residences to urban development projects, requires a prior permit issued by the local administration in the context of zoning rules and regulations, the building code and local ordinances.

Lease

Real property can be rented under lease agreements. Foreigners may lease land, buildings/houses or other properties from Indonesian Citizens or companies. Lease agreements must be in written form.

The following minimum terms should be included in the lease agreement:

- The parties, the name of the lessor and the lessee.
- Lease object;
- The Period of lease;
- Rent.