Doing business in Indonesia & Singapore – What Investors need to know

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This article is jointly written by Eng and Co. LLC and Melli Darsa & Co. Each of Eng and Co. LLC and Melli Darsa & Co. is an independent law firm and part of the network of member firms of PricewaterhouseCoopers International Limited.

The bilateral relationship between Indonesia and Singapore is strong and multi-faceted. On the investments front, Singapore has been Indonesia's largest investor since 2014. In recent times, major projects such as the Nongsa Digital Park in Batam promote collaboration between businesses from both countries.

This article discusses the key investment features in Indonesia and Singapore. In particular, it is worth noting the Indonesian government's drive to deregulate its existing laws in order to strengthen its economy and ease the conduct of business in Indonesia. In light of the Covid-19 pandemic, we take this opportunity to also touch briefly on the various stimulus packages and regulatory reliefs which both governments have put forward to support businesses through this crisis.

A. Regulatory Overview – Investment in Indonesia and Singapore

<u>Considerations for Foreign Investors in Indonesia</u>

For foreign investors looking to invest in Indonesian companies, some key considerations are as follows:

An Indonesian company that is acquired by a foreign entity or a foreigner will need to be converted into a PT PMA. Such conversion must be reported in Indonesia through an online licensing system called the Online Single Submission System ("**OSS**").

The key legal requirements for acquiring a company through a change of control are outlined below:

a. A pre-acquisition announcement in at least one national newspaper;

b. Notice to employees no later than 30 days prior to the summons of the general meeting of shareholders. Each creditor has a 14-day objection period as of the announcement;

c. Hold a general meeting of shareholders (or written resolutions);

d. A post-acquisition announcement in a national newspaper within 30 days after the acquisition date;

e. A report to the Competition Supervisory Committee within 30 days after the transaction is completed, if the acquisition meets certain thresholds.

While an acquisition generally does not affect employees, if an employee is not willing to continue the employment relationship due to the acquisition, then such employee has the right to demand termination of the employment relationship under the Labour Law and the severance payment should be calculated and paid accordingly.

In practice, a minimum the following approvals, consents or notifications are required for an acquisition of this nature: (i) approval from the company's organs; (ii) approval from or notification to creditors; (iii) approval from relevant government authorities (including the Minister of Law and Human Rights). Spousal consent is also required if the selling party is a married individual.

A business/asset transfer can be an alternative structure. However, some of the main hurdles that could arise under a business/asset transfer include: (i) settlement of any legal issues that exist prior to the transfer (e.g. encumbered assets, creditors' consent, etc.); (ii) the acquirer would be required to obtain/reapply for all relevant licenses; and (iii) the novation of agreement(s) to the acquirer.

Considerations for Foreign Investors in Singapore

For foreign investors looking to invest in Singapore companies, some key considerations are as follows:

a. **Minimal foreign investment controls**: Generally, foreign investment is controlled in one of two ways. Firstly, in certain sectors such as real estate, broadcasting and domestic media there are specific legislative restrictions on foreign ownership. Secondly, licencing requirements may include the need for foreign investors to obtain the specific approval from the relevant industry regulator.

b. **Nature of business and its impact on the type of acquisition**: In a share acquisition, the target company's key customer and/or supplier contracts may contain change of control provisions which require the counterparty's prior written consent in order for the contract to continue to be in effect. While asset acquisitions may appear to be a viable alternative, the target business' underlying contracts would likely have to be novated in order to transfer the rights and obligations of the target business to the investor. Depending on the nature of the business, there may be numerous customer and/or supplier contracts which have to be novated and this may take a significant amount of time.

c. **Change of control clauses**: While change of control clauses are generally deemed relevant in share acquisition scenarios, due diligence analysis must also consider the definitions of 'control' or 'assignment' or other similar phraseology in the target's contracts. There may be instances where an 'assignment' is defined as including a change of control which triggers consent requirements in a share acquisition.

d. **Licencing requirements**: In sectors where there are licencing / permit requirements, there are likely to be attendant insurance requirements (e.g. it may be a condition of the licence that the company must maintain certain insurance policies, such professional indemnity or directors' and officers' liability insurance) amongst other things. Investors should ensure that its investment vehicle has such insurance policies to ensure a smooth transition or applies for such licences, as the case may be.

e. **Severance payments**: Generally under Singapore law, save in circumstances involving redundancy, employees do not have an entitlement to severance payments. Further, the Employment Act (Cap. 91) of Singapore provides that where there is a transfer of business from one entity to another, the employment is deemed to have been transferred from the transferor to the transferee. The transferor may also be required to notify its employees of the transfer.

Investment Rules & Requirements

(i) **Minimum Capital**

While Law No 40 of 2007 on Limited Liability Companies requires a company to have a minimum investment amount, investment rules set higher requirements for a foreign investment limited liability company (*Perseroan Terbatas Penanaman Modal Asing* - "**PT PMA**") in respect of the minimum investment amount . The total investment amount can be a combination of equity and debt.

(ii) **Licensing and OSS System**

In 2018 the Indonesian government introduced the OSS which is a new integrated online licensing system. The main function of the OSS is to reduce and simplify administrative steps for businesses to obtain new licenses.

(iii) **Investment Incentives**

To attract investment, Indonesia currently offers two types of fiscal incentives to investors, namely tax holidays and tax allowances. The tax holiday is offered in the form of a reduction in corporate income tax of up to 100% for a certain period of time for investors who invest a certain amount of capital in prescribed industries. The tax allowance, by contrast, is a reduction in net income by 30% from the amount of investment that is charged for 6 years for investors who satisfy certain prescribed criteria. Please speak to our PwC tax team for further details on tax incentives and the relevant application procedures.

Company Establishment

In practice, the length of time it takes to complete the establishment and obtain the licences will be subject to the availability of documents required by the relevant authority and depends on the negotiations between the shareholders. In Indonesia, matters that shareholders commonly negotiate would include dividend distribution arrangements, rights to elect representatives to the board of directors and the board of commissioner and right of first offer/refusal or tag-along rights. Generally, it takes two to six months to establish a PT PMA that is ready to operate commercially.

B. Investment Updates

Indonesia's Omnibus Law

In February 2020, Indonesian President Joko Widodo's government submitted a draft bill (widely known as the "**Omnibus Law**") to the Indonesian parliament. The proposed Omnibus Law seeks to deregulate many provisions in existing laws relating to various industries and strengthen the economy by, among others, increasing competitiveness, creating jobs and facilitating the conduct of business in Indonesia.

In particular, the Omnibus Law aims to transform Indonesia's economy by easing restrictions across 11 critical areas, including labour law, capital investment, business licensing, corporate tax and land acquisition.

Some of the key features of the Omnibus Law are as follows:

1. Simplification of the business licensing process across most industries by centralising the licensing process at the central government level.

2. Introduction of a risk-based business licensing system, dividing businesses into categories of low, middle and high risk. Businesses in the "low risk" category will no longer be required to obtain a business licence. Businesses in the "middle-risk" category will also not be required to obtain a business licence but will be required to obtain a standard certification. Only businesses in the "high-risk" category will continue to be required to obtain a full business licence.

3. While the criminal sanctions (i.e. imprisonment) are still maintained in various sectors, the Omnibus Law focuses on implementing administrative sanctions (e.g. warning letter, fines, revocation of license) before resorting to criminal sanctions.

Melli Darsa and Co.'s Founding and Senior Partner, Melli Darsa, was invited to participate in the drafting, discourse and iteration of the Omnibus Law under direct mandate from the Coordinating Minister for Economic Affairs. As at the date of this update, there is no certainty on when the Omnibus Law would be ratified by parliament.

C. Responses to COVID-19 – Policy and Regulation in Indonesia and Singapore

In response to the COVID-19 pandemic, the Singapore and Indonesian governments have issued various stimulus packages and regulatory reliefs such as schemes and grants which are summarised below.

Indonesia

NATIONAL FINANCIAL POLICY	
Institution	**Brief description**
Bank Indonesia	Authorised to extend liquidity loans/shariah-principle-based financing to all banks whether systemic or non-systemic, and grant funding access to cooperatives and the private sector.
Otoritas Jasa Keuangan (Financial Services Authority or "**OJK**")	• Authorised to require financial services institutions to carry out certain corporate actions (e.g. merger or acquisition); and • Relax the enforcement of its regulations, including the mandatory reporting/disclosure and the conduct of General Meetings of Shareholders.
IMMEDIATE SCHEMES	
Scheme	**Brief description**
Tax Exemption	100% income tax borne by the government for workers in the manufacturing sector with annual income less than or equal to IDR 200m.
Tax Reduction	Corporate income tax rate reduction for domestic corporate taxpayers and permanent establishment to 22% for 2020-2021 and 20% in 2022.
FINANCIAL SCHEMES/GRANTS	
Scheme	**Brief description**
Direct Cash Assistance	Direct cash of IDR 600,000 to be directly transferred to prescribed workers actively participating in the Manpower Social Security program with salaries below IDR 5m/month.

Income Tax Exemption	Micro, Small and Medium Enterprises ("**MSMEs**") with a gross annual income of not more than IDR 4.8b can apply for the final income tax exemption.
Postponement of Principal Instalment and Interest Subsidy	MSMEs can postpone principal instalments and receive certain percentage of interest subsidies for loans with a credit plafond starting from IDR10m up to IDR10b.
New Working Capital Credit	New working capital loans to MSMEs with a maximum value of IDR 10b through banks and financing institutions with a maximum tenor of three years. This working capital loan is used for credit restructuring and promoting the continuity of MSME's businesses.

<u>Singapore</u>

IMMEDIATE SCHEMES (*Generally, there is automatic inclusion for participation in these schemes*)	
Scheme	**Brief description**
Jobs support	Government co-funding a portion of wages up to March 2021. The level of co-funding depends on the sector.
Deferment of income tax payment	Corporate income tax due in the months of April, May and June 2020 payable only in July, August and September 2020 respectively.
Property tax rebate	Up to 100% of rebates for qualifying commercial properties.
Cash grant for SME tenants in private properties	Cash grant for a portion of a month's rent for qualifying commercial / non-residential property owners.
Corporate income tax rebates	25% of tax payable, capped at S$15,000 per company.
FINANCIAL SCHEMES / GRANTS (*Generally, an application is required in order to participate in these schemes / grants*)	
Scheme / Grant	**Brief description**
Enterprise financing	• Small Medium Enterprise ("**SME**") fixed assets (up to S$30m): To finance investment of domestic and overseas fixed assets such as the purchase of equipment and machines for automation and upgrading. • Project loan (up to S$50m): To help finance the fulfilment of secured overseas projects (*e.g.* working capital or trade loans). • Mergers and acquisitions (up to S$50m): To help finance the acquisition of local or overseas target enterprises.
Enterprise development grant	• To support projects aimed at upgrading, innovation or overseas ventures (e.g. third-party consultancy fees, software and equipment). • Maximum funding support level raised to 80% from 1 April to 31 December 2020. • Subject to various registration and local shareholding requirements.
Productivity solutions grant	• Aimed at encouraging companies to increase digitisation and productivity. • Maximum funding support level raised to 80% from 1 April to 31 December 2020.

Contact Details

If you should have any queries, please do not hesitate to contact any of us:

Eng and Co. LLC

Rachel Eng
Managing Director
+65 6597 3343
rachel.eng@mail.engandcollc.com

Lynn Soh
Director
+65 6597 3339
lynn.soh@mail.engandcollc.com

Andrew Heng
Associate Director
+65 6597 3348
andrew.heng@mail.engandcollc.com

Melli Darsa & Co.

Melli Darsa
Senior Partner
+62 21 5212901
melli.darsa@pwc.com

Indra Allen
Partner
+62 21 5212901
indra.allen@pwc.com

Puji Atma
Junior Partner
+62 21 5212901
puji.atma@pwc.com