

INDONESIA¹

I. Overview of Country

Indonesia, a civil law country, stands at 155th in the ranking of 189 economies on the ease of starting a business.² For the last ten years, the government of Indonesia has been actively introducing measures directed at encouraging investing in Indonesia and improving the country's regulatory and economic environment. Some of the key recent measures include:³

- i. Amending the Investment Law in 2007 to provide more assurance on matters such as equal treatment among investors, ability to repatriate profit from Indonesia, investment incentives and protection from nationalization.
- ii. Issuing the Negative List of Investment in June 2010 to open more business sectors to foreign investors.
- iii. Amending Tax Laws in 2008 and 2009 to improve tax administration and to reduce the corporate income tax rate to a flat 25 percent rate starting from 2010.
- iv. Amending laws and regulations in certain sectors such as shipping and mining in order to improve the licensing process and attract more investment in these sectors.
- v. Developing an integrated service for both the central and regional governments to simplify the licensing process for businesses operating and investing in Indonesia.

The prevailing Constitution of Indonesia (the 1945 Constitution) guarantees freedom of association (in Article 28) and expression (in Article 28E).⁴ Freedom of assembly⁵ is usually upheld, and peaceful protests are common in the capital. However, authorities have restricted the right to assembly in

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² See Doing Business 2015: Economy Profile Indonesia, The World Bank, available at http://www.doingbusiness.org/data/exploreeconomies/indonesia/~/_media/giawb/doing%20business/documents/profiles/country/IDN.pdf?ver=2 (last visited March 31, 2015).

³ See Doing Business in Indonesia, PWC, available at <http://www.pwc.de/de/internationale-maerkte/assets/doing-business-in-indonesia.pdf> (last visited March 31, 2015).

⁴ Article 28 of the Constitution provides that "the liberties of association and assembly, the freedom of thought expressed verbally or in writing and similar rights, are to be determined by law."

⁵ On July 2, 2013, Indonesia's parliament enacted the Law on Mass Organizations in the face of outspoken opposition from religious groups, labor unions, human rights organizations, and environmental groups. Provisions of the Law on Mass Organizations infringe upon the rights to freedom of association, expression, and religion, and provide the government wide latitude to obstruct NGO work. See generally, Human Rights Watch: Indonesia: Amend Law on Mass Organizations, available at <http://www.hrw.org/news/2013/07/17/indonesia-amend-law-mass-organizations> (last visited April 21, 2015) (discussing the Law on Mass Organizations, which according to critics of the law provides, among other things: (i) authority for the government to decide whether an organization has violated the Law on Mass Organizations; (ii) vague requirements on NGOs that leave them exposed to improper government interference in their work; and (iii) an overreaching general ban on foreign NGOs from participating in activities that may "disrupt the stability and integrity" of Indonesia or "engage in activities that disrupt diplomatic relations.").

conflict areas. There is also the Freedom of Association Protocol,⁶ which supports the rights of women and men producing for global brands in Indonesia to join unions and bargain collectively for better working conditions making a change. On June 7, 2011 a protocol on freedom of association was signed by Indonesian trade unions, employers and multinational sportswear brands including Adidas, Nike, Puma, Pentland, New Balance and Asics.

II. Registration Procedures

A. For-Profit Organizations

a. Laws

Law ⁷	Applicability	Comments
Law No. 40 of 2007 concerning Limited Liability Company	All limited liability company activities	Establishment of limited liability company, capital and shares, merger, acquisition, and dissolution, work program, annual report, and use of profit, liquidation, expiry of company.
Law No. 25 of 2007 concerning Investment	All investment activities (domestic and foreign)	Form of business entity for investment, treatment of investor, manpower plan, and business sector for investment, rights and obligations and liabilities of investor, investment facilities.
Law No. 13 of 2003 concerning Manpower	Manpower in companies	Manpower management, rights and obligations of employee, rights and obligations of the company, and all related manpower plan for business activities.
Law No. 8 of 1995 concerning Capital Market	All listed company activities	Capital market supervisory board (OJK), stock exchange, clearing and guarantee corporation, central securities depository, investment fund, securities company, securities company representatives, and investment advisors, capital market supporting institutions and professionals, issuers and public companies, public documents and reporting to OJK.
Indonesian Code of Good Corporate	All company practices	Code of conduct and business ethics, company organs,

⁶ See Freedom of Association Protocol, available at <http://www.play-fair.org/media/index.php/workers-rights/foa-protocol/>.

⁷ See generally The Indonesia Corporate Governance Manual, First Edition, International Finance Corporation, available at http://www.ifc.org/wps/wcm/connect/64185f0042cc3ab0b145fd384c61d9f7/Indonesia_CG_Manual_Feb2014.pdf?MOD=AJPERES (last visited April 1, 2015)

Governance 2006		shareholders, stakeholders, good corporate governance principles, implementation of the good corporate governance.
All related regulations in OJK Capital Market	Capital market activities	Capital market supervisory board (OJK), stock exchange, clearing and guarantee corporation, central securities depository, investment fund, securities company, securities company representatives, and investment advisors, capital market supporting institutions and professionals, issuers and public companies, sanctions, public documents and reporting to OJK.

As mentioned above, Indonesia enacted a new Company Law (Law No. 40/2007), effective as of 16 August 2007. Company Law No. 40 of 2007 regulates limited liability (Perseroan Terbatas, or “PT”) companies. The PT is the most common form of business organization (and the one to which foreign investors are restricted under the Investment Law as described in Section IV.A below).

The different types of companies recognized in Indonesia are:

- i. limited liability company;
- ii. single proprietorship;
- iii. limited partnership company;
- iv. firm; and
- v. cooperative.

Incorporation of a PT requires: (i) an application and approval on the use of PT name; (ii) drawing up PT Deed of Establishment; (iii) obtaining the certificate of registered domicile; (iv) obtaining the registered tax number; (v) opening a bank account in a company’s name and payment of capital stock; (vi) obtaining the certificate of payment of capital stock from a bank (it is necessary to pay more than one-fourth of the minimum authorized capital stock (IDR 50 million)); (vii) submission of related documents, such as the certificate of incorporation and that of payment of capital stock, to the Ministry of Justice and Human Rights; and (viii) obtaining approval from the Ministry of Law and Human Rights.⁸

The procedures for establishing new companies (including obtaining legal entity status) are as follows:⁹

⁸ See Doing Business in Indonesia; Nishimura & Asahi, *available at* https://www.jurists.co.jp/en/publication/tractate/docs/111201_Indonesia_E.pdf (last visited March 31, 2015).

⁹ See Indonesia's New Company Law, Hadiputranto, Hadinto & Partners Business in Indonesia, *available at* http://www.hhp.co.id/files/Uploads/Documents/Type%202/HHP/br_hhp_indonesiasnewcompanylaw.pdf (last visited March 31, 2015).

(a) A company must have a minimum of two shareholders, except for:

- (i) companies that are wholly-owned by the State;
- (ii) companies that manage a stock exchange;
- (iii) clearing and guarantee institutions;
- (iv) central securities depositories; and
- (v) other institutions, as stipulated under the Indonesian Capital Markets Law.

(b) The minimum capital for a company is IDR 50,000,000. However, a higher minimum capital requirement may be applied by law for companies engaging in certain business activities. From the authorized capital, 25 percent must be issued and fully paid-up by the founders. Payment of capital can be made in cash or in-kind (subject to a fair value, determined on the basis of the market value or by an independent expert, to ensure shares are fully paid up).

(c) The application for Ministry of Law and Human Rights (MOLHR) approval can be submitted electronically by the founders or their proxy (the proxy should be a notary) through the "Sisminbakum system," the administrative system for legal entities maintained by the MOLHR.

(d) The application for the MOLHR's approval (attaching the required supporting documents, e.g. certificate of incorporation/articles of association of the founder) must be submitted no later than 60 days after the date of the Deed of Establishment. Otherwise, the Deed of Establishment will be deemed null and void, the company will be dissolved by law, and the founders will need to arrange for the liquidation of the company. If there is no objection to the data submitted to the Sisminbakum system, the company must file the physical documents to the MOLHR within 30 days. The MOLHR will, in theory, issue its approval within 14 days as of the filing of the physical documents.

(e) A company obtains its legal entity status as of the date that the MOLHR approval is issued.

(f) Actions taken by the founders in connection with their share ownership and subscription of shares must be stated and attached in the Deed of Establishment either in the form of a notarial deed or a privately drawn deed, otherwise, such actions will not bind the company.

The above is described in further detail in the table below:

**SUMMARY OF TIME, COST AND PROCEDURES
FOR STARTING A BUSINESS (COMPANY) IN INDONESIA:¹⁰**

NO.	PROCEDURE	TIME TO COMPLETE	COST TO COMPLETE
1	<u>Hire a notary to pay the fee for name clearance at a bank; obtain the standard form of the company deed; arrange for a notary electronically; obtain clearance for the Indonesian</u>	6 days	See procedure details

¹⁰ See Doing Business 2015: Economy Profile Indonesia, The World Bank, available at <http://www.doingbusiness.org/data/exploreeconomies/indonesia/~media/giawb/doing%20business/documents/profiles/country/IDN.pdf?ver=2> (last visited March 31, 2015).

company's name at the Ministry of Law and Human Rights; notarize company documents; pay the State Treasury for the non-tax state revenue (PNBP) fees for legal services at a bank

Because the process of company name clearance must be done through a computerized processing system, the reservation and clearance must be done by a notary public. The notary must first pay the fee of IDR 200,000 at a bank before obtaining clearance for the proposed company name. Once the notary pays at a bank, he obtains a payment receipt with a code. He then inserts the code online when reserving the company name as proof of payment. The reserved name will be blocked for 60 days. If the founding shareholders are confident that the same name has not been used by another Indonesian company, this procedure is not necessary. Under Article 16 of Law No. 40 of 2007 on Limited Liability Companies, company must not use a name which:

- a. has been lawfully used by another company or is similar to the name of another company;
- b. contravenes public order and/or decency;
- c. is identical or similar to the name of a state agency, government agency, or international agency, except with their approval;
- d. does not conform to the purposes and objectives and business activities of the company, or only designates the purposes and objectives of the company without having its own name;
- e. consists of numbers or a set of figures, a letter or a set of letters that do not form any words; or
- f. means a Company, a legal entity, or a civil enterprise (persekutuan perdata).

The Ministry of Law and Human Rights may reject a name application reservation if the requested name is, among others, the same or resembles similarities to name of other companies.

Government Regulation No. 26 of 1998 on Use of Names of Limited Liability Companies also provides that an application to use a name that is the same or similar to a well-known trademark shall be rejected unless approval is obtained from the holder of the trademark Law No. 30 of 2004 concerning Notaries (Article 36 paragraph 3) stipulates that the maximum notary fee for objects of deed with an economical value of above IDR 100,000,000 up to IDR 1,000,000,000 is 1.5% of the total value of the object of the deed.

	<p>The requirement to pay the PNBP fee for legal services in relation to the establishment of a PT is obtained from the information stated in the website of the Legal Entity Administration System known as SABH (Sistem Administrasi Badan Hukum)(www.sisminbakum.go.id).</p> <p>Cost: Name clearance fee is IDR 200,000. Law No. 30 of 2004 concerning Notaries (Article 36 paragraph 3) stipulates that the maximum notary fee for objects of deed with an economical value of above IDR 100,000,000 up to IDR 1,000,000,000 is 1.5% of the total value of the object of the deed. IDR 1,580,000 PNBP fees for legal services.</p> <p>Time: 1 day to complete the payment for the name clearance at the bank + 4 days to complete the name clearance and prepare the deed of establishment and have the founders sign it + 1 day to pay the State Treasury for the PNBP fees.</p>		
2	<p><u>Apply to the Ministry of Law and Human Rights for approval of the deed of establishment</u></p> <p>Based on Article 9, 10, 29 and 30 Indonesian Company Law No. 40 year 2007, the application for approval of Ministry of Law and Human Right (the Ministry of Law) on establishment of company should be able to file electronically by attaching with the certificate of bank account, copy of the relevant bank transmittal advice. The process will be taken as follows:</p> <ol style="list-style-type: none"> a. The application should be filled at the latest 60 days since the date of establishment deed; b. Since the application has already fulfilled, the Ministry of Law directly electronically stated no objection on said application. However, if the application is not fulfilled, the Ministry of Law will directly electronically state his objection on said application; c. in 30 days since the date of no objection by Ministry of Law, the applicant should submit the original application and supporting documents; d. 14 days after fulfillment of above requirements, Ministry of Law will issue the legalization on the establishment of the company; e. Data of company which its establishment has been approved by Ministry of Law i.e. name, domicile, object and purpose, period, Capital Company will be inserted into Company Registry. f. The Ministry of Law will announce the establishment of company in Supplement State Gazette (TBNRI) within 	Less than one day (online procedure)	included in procedure 5

	<p>14 days of the Ministry's Approval Letter.</p> <p>As of March 2014, the Ministry of Law and Human Rights issues the approval of the deed of establishment electronically.</p> <p>The cost of this procedure is based on the Schedule to the Government Regulation Number 38 of 2009 concerning Types and Tariffs on Non-Tax State Revenues Applied for in the Department of Law and Human Rights which comes into effect on 28 May 2009.</p>		
3	<p><u>Obtain the Building Management Domicile Certificate</u></p> <p>For companies that locate in an office building, business founders need to get the Building Management Domicile Certificate from the Building Management Office before applying for the Certificate of Company Domicile.</p>	1 day	no charge
4	<p><u>Apply for the Certificate of Company Domicile</u></p> <p>All Indonesian limited liability companies must have a certificate of company domicile. This certificate is issued by the head of the village (the Lurah) where the company is located or by the building management if office space is leased. There is no official fee for this certificate. This certificate is required for several documents (SIUP, TDP, etc.)</p>	2 days	no charge
5	<p><u>Apply at the Ministry of Industry and Trade for the permanent business trading license (Surat Izin Usaha Perdagangan, SIUP)</u></p> <p>The Surat Izin Usaha Perdagangan (SIUP) constitutes the business license for a non-facility company engaging in trading business. The SIUP contains details about the company activities and the person in charge of the company (normally the President Director). The Ministry of Industry and Trade, which issues the SIUP for a non-facility company, may require a letter of good conduct from the Indonesian police in support of the person in charge of the company. Normally, the following copy of documents should be attached for the application for a SIUP:</p> <ol style="list-style-type: none"> a. The articles of association (copy). b. An attestation of location and address of the company's offices (building management domicile certificate and certificate of company domicile). c. Identity card of the company President Director. d. Letter of approval from the Ministry of Law and Human Rights After reviewing the application, the Municipality passes it to the technical agency at the regional office for cooperatives for further review• it takes 2 days to get the signature of the head of that office as the authority is not delegated. Once the application is back, the SUIP is 	15 days	no charge

	<p>provided.</p> <p>The Trade Minister Regulation No. 36/M-DAG/PER/9/2007 as amended by the Trade Minister Regulation No. 46/M-DAG/PER/9/2009 classified the SIUP based on the enterprises' net assets as follows:</p> <ul style="list-style-type: none"> i. Small Scale SIUP must be held by businesses engaging in trade having a net asset of more than Rp. 50.000.000,- (fifty million Rupiah) up to no more than Rp. 500.000.000,- (five hundred million Rupiah) not including land and building on which the business operates; ii. Medium Scale SIUP must be held by businesses engaging in trade having a net asset of more than Rp. 500.000.000,- (five hundred million Rupiah) up to no more than Rp. 10.000.000.000,- (ten billion Rupiah) not including land and building on which the business operates; or iii. Large Scale SIUP must be held by businesses engaging in trade having a net asset of more than Rp. 10.000.000.000,- (ten billion Rupiah) not including land and building on which the business operates.” 		
6	<p><u>Obtain company registration certificate (Tanda Daftar Perusahaan/TDP) from the Local Government Office</u></p> <p>The SIUP must be obtained before the TDP can be issued. The same documents submitted for the SIUP must also be submitted for the TDP, in addition to the SIUP itself.</p>	14 days	no charge
7	<p><u>Register with the Ministry of Manpower</u></p> <p>According to Law No. 7/1981, companies with more than 10 workers or a monthly payroll of IDR 1 million must register with the Ministry of Manpower. This procedure can be completed concurrently with other post-registration procedures by filing the manpower compulsory report and company regulations with the Ministry of Manpower. Although there is no official fee, there may an unofficial administrative fee that depends on negotiation and usually starts at IDR 100,000.</p>	14 days	no charge
8	<p><u>* Apply for the Workers Social Security Program (BPJS Ketenagakerjaan)</u></p> <p>According to legal provisions on workers' social security (Law No. 3/1992), it is mandatory for every company or individual employing 10 workers or more or generating a monthly payroll of at least IDR 1 million a month to apply for the Workers Social Security Program (BPJS Ketenagakerjaan), operated by the executing agency. This social security program covers occupational accident security, death security and old age security.</p>	7 days (simultaneous with previous procedure)	no charge

	A company or an individual is not obligated to enroll its employees in the social security program if it offers an independent employee social security program with benefits comparable or better than those offered by the Package of Basic Health Maintenance Security (according to Government Regulation No. 14/1993, as amended by Government Regulation No. 28 /2002).		
9	<p>* <u>Apply for healthcare insurance with BPJS (Badan Penyelenggara Jaminan Sosial) Kesehatan</u></p> <p>All new businesses must apply for health insurance with BPJS (Badan Penyelenggara Jaminan Sosial) Kesehatan.</p>	7 days (simultaneous with previous procedure)	no charge
10	<p>* <u>Obtain a taxpayer registration number (NPWP) and a VAT collector number (NPPKP)</u></p> <p>Regulation of Directorate General of Taxation No. 44/PJ/2008 which comes into effect on 20 October 2008 concerning Procedures of Application of Taxpayer Registration and/or Taxable Entrepreneur Number, Amendment of Data and Transfer of Taxpayer and/or Taxable Entrepreneur aimed to enhance the service to the taxpayer. The regulation states that within 1 year as of the issuance of NPWP, the relevant Tax Office will conduct field confirmation regarding the correct data/identity of the taxpayer a. The person/entity can apply for NPWP in the relevant tax office where the company is located or can apply it online through http://www.pajak.go.id, choose e-registration to make account as a taxpayer and then follow the procedures therein, by filling the form and attaching copies of deed of establishment and its amendment if any, identity card/KTP of one of active Director, statement letter regarding confirmation on place of business from one of the active Director (form is provided), POA and identity card/KTP of the authorized. The NPWP card and Registered Statement Letter is obtained within 1 calendar day upon the completeness of the required document without and fee, charge and/or retribution.</p>	1 day (simultaneous with previous procedure)	no charge

* *takes place simultaneously without another procedure.*

b. Case Law

We did not locate applicable case law. Please see above.

B. Not-For Profit Organizations

a. Laws

Indonesia has the following primary forms of not-for profit, non-governmental organizations (NPOs):

i. foundations

- ii. associations, and
- iii. societal organizations without legal entity status.

Law No. 17 of 2013 regarding Societal Organizations (Organisasi Kemasyarakatan) regulates civil society organizations in general. Foundations and incorporated associations fall under the category of “societal organizations with legal entity status,” while all other NPOs are categorized as “societal organizations without legal entity status.” Only foundations can be founded by foreign entities. There are three types of such foundations: (a) foreign foundations, (b) Indonesian foundations founded by foreign nationals or by foreign nationals together with Indonesian citizens, and (c) Indonesian foundations founded by a foreign legal entity.

Foundation (Yayasan)

Law No. 16 of 2001 on Foundations came into effect in August 2002 and was amended by Law No. 28 of 2004, which came into effect in October 2004. The law defines a foundation as a non-membership legal entity, established based on the separation of assets and intended as a vehicle for attaining certain purposes in the social, religious, or humanitarian fields (Law on Foundations Article 1 Section 1). The law stipulates that the organizational structure of a foundation must consist of three bodies: the Governing Board (Badan Pembina), Supervisory Board (Badan Pengawas), and Executive Board (Badan Pengurus). The Governing Board delegates some functions, powers, and duties to the other bodies.

Associations (Perkumpulan)

There are two types of associations in Indonesia: (i) incorporated associations, which possess legal personality; and (2) ordinary associations, which do not. Both are membership-based organizations. Associations can be public-benefit organizations or mutual-benefit ones. The Law on Societal Organizations requires that associations be formed by a minimum of three Indonesian citizens.

Incorporated associations are based on the Staatsblad 1870-64 (Dutch Colonial State Gazette) on Associations with Legal Person Status, along with the Law on Societal Organizations. Individuals wishing to create an incorporated association must submit articles of association containing the association’s statutory purposes to the Minister of Law and Human Rights. Approval by the Minister confers legal personality.

As for the ordinary association, Staatsblad 1870-64 acknowledges the existence of an association without legal personality (Articles 8 and 9). The ordinary association is commonly known by various titles in Indonesian language such as Perhimpunan, Ikatan, and Paguyuban. An ordinary association is prohibited from conducting activities as a legal entity; any action taken will be considered the action of an individual member of the association. Even though such associations are not considered legal entities, they are still regulated by Articles 1663 and 1664 of the Indonesian Civil Code.

There are initiatives from various entities, including the government, non-governmental organizations and scholars, to draft a new law concerning associations.

Societal Organizations without Legal Entity Status

Societal organizations without legal entity status shall be established by a minimum of three Indonesian citizens. They are formally recognized upon the issuance of a Registration Certificate (Surat Keterangan Terdaftar or SKT) from the Ministry of Home Affairs for a national-level organization, or

governor for a provincial-level organization, or mayor/bupati for a city/regency-level organization. The law further stipulates that national level organizations are organizations that have organizational structures in a minimum of 25 percent of the total number of provinces in Indonesia; provincial level organizations are organizations that have organizational structures in a minimum of 25 percent of the total number of cities/regencies in a province; and city/regency-level organizations are organizations that have organizational structures in at least one district.

There are also more simple types of societal organizations, i.e., ones without formal documents such as a deed of establishment, organizational work plan, and tax identification. The data of such organizations is collected by the Camat (District Head) (Law on Societal Organizations Article 18).

b. Case Law

We did not locate applicable case law. Please see above.

C. Analytical comparison of the legal process of registration

See above.

III. Tax Laws

A. For-Profit Organizations

a. Laws

The principal taxes applicable to companies doing business in Indonesia are the corporate income tax, branch profits tax, resource royalty tax, withholding tax, value added tax (VAT) and various other indirect levies, such as tax on land and stamp duty. There is no excess profits tax or alternative minimum tax. The main tax laws are the Income Tax Law, VAT Law, Land and Building Tax Law, and the Law on General Tax Provisions and Procedures. Taxes are administered by the Directorate General of Taxes (DGT).

Worldwide income is taxable for corporations established based on Indonesian law (resident corporations). Indonesian domestic source income is taxable for foreign corporations that have Indonesian domestic source income but do not perform any business in Indonesia, and foreign corporations that have a permanent establishment (PE) in Indonesia (non-resident corporation).

A corporate taxpayer is a tax resident if incorporated or domiciled in Indonesia. A permanent establishment is used by an individual not residing in Indonesia or present in Indonesia. Resident taxpayers (including resident employees) are taxed at a normal rate on taxable income, namely, worldwide gross income less allowable deductions (excluding non-taxable income and final tax income).

A snapshot of Indonesia's tax rates (applicable to companies) is provided below:¹¹

Tax	Description
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¹¹ See generally Tax System of Indonesia, Indonesia-Investments (Jakarta Strategic Consulting), <http://www.indonesia-investments.com/finance/tax-system/item277> (last visited March 31, 2015).

Corporate Income Tax	<ul style="list-style-type: none"> • 25 percent on all income (normal rate)
	<ul style="list-style-type: none"> • a 5 percent lower than normal rate is applied to a Limited Company of which at least 40 percent of its shares are traded on the stock exchange market (IDX)
	<ul style="list-style-type: none"> • a 50 percent deduction from the normal rate is applied to companies with a gross turnover up to IDR 50 billion
VAT (Value Added Tax)	<ul style="list-style-type: none"> • Input and Output mechanism
	<ul style="list-style-type: none"> • The current rate is 10 percent
Withholding tax <i>for payments to residents</i>	<ul style="list-style-type: none"> • 15 percent for interest, dividends and royalties
	<ul style="list-style-type: none"> • 2 percent for services
	<ul style="list-style-type: none"> • These withholding taxes are considered corporate tax prepayments
	<ul style="list-style-type: none"> • 10 percent for land and building rental (final tax)
	<ul style="list-style-type: none"> • Withholding tax calculated on sales/revenue is considered a final tax
Withholding tax <i>for payments to non-residents</i>	<ul style="list-style-type: none"> • 20 percent according to the domestic law, but can be reduced by using tax treaty provisions, or exempt for services that qualify as business profits
Tax Losses	<ul style="list-style-type: none"> • Can be carried forward for 5 years

Indonesia's Double Taxation Agreements provide for tax benefits in the form of withholding tax exemptions for service fees and for reduced withholding tax rates on dividends, interest, royalties, and branch profits received by tax residents of its treaty partners. Tax exemption on service fees is typically granted only if the foreign party earning the incomes does not have a permanent establishment in Indonesia.

A corporate taxpayer (limited liability company) investing in certain industries (high priority economic sectors on the national scale as stipulated by government regulation) and/or areas (with

high economic potential to be developed) may be entitled to income tax benefits in the form of the following:¹²

- i. An additional reduction of taxable income, up to 30 percent of the amount invested;
- ii. Accelerated depreciation or amortization;
- iii. Extension of tax loss carryforwards for up to 10 years; and
- iv. A reduced (10 percent) withholding tax on dividends paid to nonresidents, or less if so provided under a tax treaty. A request for this facility must be submitted by the taxpayer to the Minister of Finance, who will issue a decision on whether to approve the request.

Indonesia has a tax holiday regime for new domestic or foreign investment in specified business sectors (pioneer industries). The regime grants beneficial tax treatment to manufacturing projects in high priority sectors (i.e. base metals, oil refining/petrochemicals, machinery, renewable energy and telecommunication equipment) and in remote areas. The tax incentives are as follows:¹³

- i. An exemption from corporate income tax for five to 10 years from the date commercial production commences;
- ii. A two-year, 50 percent reduction in corporate income tax liability after the end of the tax holiday period; and
- iii. An extension of the exemption or reduction in corporate income tax, depending on the competitiveness and strategic value of the industry.

To qualify, the company must meet the following requirements:¹⁴

- i. It must invest at least IDR 1 trillion (approximately USD 117 million) in a qualified pioneer industry;
- ii. It must deposit at least 10 percent of the total investment in an Indonesian bank, which cannot be withdrawn before the company undertakes its investment plan; and
- iii. It must be a new taxpayer with Indonesian legal entity status (however, existing investors that have operated for less than 12 months also may qualify for the tax holiday).

Batam is the first Special Economic Zone (SEZ) opened in Indonesia. It includes the islands of Batam, Tonton, Setokok, Nipah, Rempang Galang and Galang Baru and lies on one of the world's busiest shipping lanes between Sumatra and Singapore.¹⁵ Investment Law (article 31/1) specifies the role of special economic zones as following: "Special economic zones may be specified and developed for accelerating economic development in certain regions whose nature is strategic for national economic development, as well as maintaining balance of regional progress." Accordingly, Batam is exempt from

¹² See Taxation and Investment in Indonesia 2014, Deloitte, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-indonesiaguide-2014.pdf> (last visited March 31, 2015).

¹³ Id.

¹⁴ Id.

¹⁵ On January 19, 2009, the President of Indonesia officially declared the Batam-Bintan-Karimun as a free trade zone or an FTZ. FTZ is a policy exempting facilities from some customs rules, including the taxes and levies. In this area, trade is governed by a wide range of regulations. Investors can use this route to establish businesses in the region.

import duties, sales tax, VAT, tax on luxury goods, divergence, and customs. Moreover, if an entrepreneur makes products in the region, they will have a lot of export incentives.

b. Case Law

We did not locate applicable case law. Please see above.

B. Not-For Profit Organizations

a. Laws

Indonesian NPOs are generally subject to income tax. Donations, including religious-based donations and grants, are not taxed provided that there is no business or ownership relationship between the parties. In addition, the following types of income are tax-exempt: (i) income that an NPO uses to provide scholarship funds, and (ii) income (sisa lebih) of an NPO working in the area of education or research and development that is re-invested in its work as per the timing requirements of the income tax law (Law No.36 of 2008 on Income Tax Article 4 Section 3).

Tax deductions for charitable contributions are available for natural disasters, research and development activities, development of social infrastructure, education facilities, and sport. Indonesia subjects the sale of most goods and services to a Value Added Tax (VAT), with some exemptions pertinent to NPOs. Certain goods are exempt from customs duties as well.

NPOs are also subject to Land and Building Taxes, Stamp Duty, and Real Property Acquisition Fee.

b. Case Law

Did not locate applicable case law. Please see above.

C. Analytical comparison

Both types of organization (for-profit and not-for profit) are generally subject to income tax. Donations, including religious-based donations and grants, are not taxed to not-for profits provided that there is no business or ownership relationship between the parties. See above.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

Law ¹⁶	Applicability	Comments
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¹⁶ See generally The Indonesia Corporate Governance Manual, First Edition, International Finance Corporation, available at http://www.ifc.org/wps/wcm/connect/64185f0042cc3ab0b145fd384c61d9f7/Indonesia_CG_Manual_Feb2014.pdf?MOD=AJPERES (last visited April 1, 2015)

Presidential Regulation No. 36 of 2010 concerning Lists of Business Fields that are Closed To Investments and Business Fields that are Conditionally Open for Investments	Business fields for foreign investment activities	List of business fields that are open and closed for foreign investment.
Head of BKPM Regulation No. 12 of 2009 concerning Procedures and Guidelines of Investment Application	Foreign investment activities	One stop service of permit application, procedure and mechanism to conduct foreign investment in Indonesia, transfer of foreign shares, fiscal and non-fiscal facilities, regional incentives, foreign workers manpower plan (RPTKA), Producer Importer Identification Number (API-P), tax facilities, custom.
Ministry of Manpower and Transmigration Decree No. 40 of 2012 concerning Certain Positions that are Prohibited for Foreign Workers	Company with foreign workers	List of positions in a company that are restricted for foreign workers.

The Investment Coordinating Board (BKPM) is responsible for promoting foreign and domestic investment and approving most project proposals in Indonesia. Other government agencies or ministries handle investments in the oil and gas, banking and insurance industries. The BKPM or the corresponding provincial board approves foreign and domestic investment in all other sectors.

The main legislation governing foreign direct investment in Indonesia is Capital Investment Law No. 25/2007 which was issued in 2007. Pursuant to Law No. 25/2007, foreign investment shall be made in the form of a Limited Liability Company based on the law of the Republic of Indonesia, unless otherwise prescribed by law. Foreign investors making an investment in the form of a limited liability company shall be conducted in the following ways: (a) by having shares when the company is established; (b) by purchasing the shares; and (c) by executing any other method pursuant to the rules of law.¹⁷

Not all types of business are open for foreign investors. According to Article 12, paragraph 1 of Law No. 25 of 2007, basically all business sectors shall be open to investment activities, except for business sectors that are declared to be closed and open with certain conditions. Many business sectors are open to foreign investment companies (PMA), with certain exceptions as stipulated under Presidential Regulation No. 39 of 2014 which lists business sectors that are closed to investment and business sectors

¹⁷ See Doing Business in Indonesia; Nishimura & Asahi, *available at* https://www.jurists.co.jp/en/publication/tractate/docs/111201_Indonesia_E.pdf (last visited March 31, 2015).

that are conditionally open for investment (Negative List for Investment).¹⁸ The foreign companies can also establish foreign representative offices.

The following are three of the most common types of representative office allowed to be set up in Indonesia:

1. Foreign Representative Office (Kantor Perwakilan Perusahaan Asing)

According to Article 1 of Presidential Decree No. 90 of 2000 regarding the foreign representative office (in conjunction with Article 1 of the Regulation of the Chairman of the Indonesian Investment Coordinating Board No. 12 of 2009 concerning the Procedure Application of Investment Licenses (Perka BKPM No. 12/2009)), a foreign company or a group of foreign companies may open a foreign representative office in Indonesia to manage its or their interest, or to prepare for the establishment and development of its/their business in Indonesia.

The foreign representative office shall be led by one or more Indonesian or foreign citizens considered to be the representative office executive. The appointment of a representative office executive shall be based on the letter of appointment from the relevant foreign company or groups of foreign companies. In order to obtain the license for this type of representative office, the application must be submitted to the Indonesian Investment Coordinating Board (BKPM).

The activities of this type of foreign representative office are limited to the role of supervisor, intermediary, coordinator, or manager of the foreign company group's interests. Further, a foreign representative office must not participate in managing the foreign company, its subsidiary, or its branches in Indonesia; moreover, it is not allowed to generate revenues in Indonesia. A foreign representative office shall not engage in any agreement or sale and/or purchase transaction of goods and services with an Indonesian company or Indonesian nationals.

2. Foreign Trade Representative Office (Perwakilan Perusahaan Perdagangan Asing)

A foreign trade representative office is established by a foreign company or a group of foreign companies to act as its/their representative in Indonesia. It may be established as either a selling agent, manufacturer's agent, and/or purchasing agent. According to Article 4 of the Regulation of the Ministry of Trade No. 10 of 2006 regarding the Procedure of Issuing the License of Foreign Trade Representative Office (Permendag No. 10/2006), a Foreign Trade Representative Office is prohibited from conducting trades, transactions, or sales activities which represent an entire transaction from beginning to end (e.g., resulting from tender document submission, contract signing, and claims settlement).

The scope of a foreign trade representative office is limited to those activities as referred to in Article 3 of Permendag No. 10/2006, namely: (a) introduction, promotion and enhancement of marketing of goods produced by foreign companies or association of foreign companies which appoint the foreign trade representative office, as well as provide information or directives for the use and import of goods to companies/users in the country; (b) market research and supervision of domestic sales in Indonesia in the framework of marketing goods of foreign companies or association of foreign companies which appoint the foreign trade representative office; (c) market research of goods needed by foreign companies or association of foreign companies which appoint the foreign trade representative office as well as provide

¹⁸ See Taxation and Investment in Indonesia 2014, Deloitte, available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-indonesiaguide-2014.pdf> (last visited March 31, 2015).

information and directives related to the export of the goods to companies in the country; and (d) close contracts for and on behalf of the appointing companies with companies in Indonesia in the framework of the exports.

3. Foreign Construction Services Representative Office

As specified in the Government Regulation of the Republic of Indonesia No. 28 of 2000 regarding the Business and Role of Construction Society (PP No. 28/2000) in conjunction with the Regulation of the Minister of Public Works No. 05/PRT/M/2011 regarding the Guidance on the Requirements to Grant Foreign Construction Company Representative License (Permen PU No. 05/2011), in order to establish the representative office for foreign construction services, the foreign construction company (BUJKA) must obtain a permit called the License of Representative Office for Foreign Construction Services (Izin Perwakilan Badan Usaha Jasa Konstruksi/IUJK). The IUJK will only be granted to BUJKA, which is classified as “large” based on the certificate issued by the National Construction Services Development Board (Lembaga Pengembangan Jasa Konstruksi/LPJK). The Ministry of Public Works will issue the IUJK for a period of three years, and the license can be extended.

ii. Political Contribution Laws

Article 35 of Law No. 2 of 2008, as amended by No. 2 of 2011, on Political Parties ("Political Party Law") provides for contributions to political parties, Articles 94 to 96 of Law No. 42 of 2008 on Presidential and Vice Presidential Elections (Presidential Elections Law) provides for contributions to political campaigns, and Law No. 8 of 2012 on the Election of the House of Representatives, the Regional Representative Council and Regional House of Representatives (the Legislative Elections Law) provides for contributions to House of Representatives campaigns.¹⁹

The Political Party Law provides for contributions to political parties as follows:

- i. Individuals who are members of the political party may contribute according to the bylaws of the political party, potentially making contributions by individual party members unlimited.
- ii. Individuals who are not members of the political party are limited to making contributions upwards to IDR 1 billion (approx. USD 83 thousand) per financial year.
- iii. Companies are limited to making contributions upwards to IDR 7.5 billion (approx. USD 623 thousand) per financial year.

The Presidential Elections Law provides for contributions to political campaigns as follows:

- i. Contributions by candidates are unlimited.
- ii. Contributions by the political party, or coalition of political parties, of the candidate are unlimited.

¹⁹ See generally The Indonesian Election Process and Contributions to Political Parties and Campaigns, The Legal 500 Corporate & Commercial Legal Developments, available at <http://www.legal500.com/c/indonesia/developments/26250> (last visited April 3, 2015).

- iii. Contributions by individuals are limited to IDR 1 billion (approx. USD 83 thousand)
- iv. Contributions by companies or other groups are limited to IDR 5 billion (approx. USD 415 thousand).

The Legislative Elections Law provides for contributions to House of Representatives campaigns as follows:

For DPR (House of Representative) and DPRD (Provincial/Regency/Municipality Legislative) Election (Articles 129-131 Legislative Elections Law):

- i. Contributions by candidates are unlimited.
- ii. Contributions by the political party, or coalition of political parties, of the candidate are unlimited.
- iii. Contributions by individuals are limited to IDR 1 billion (approx. USD 83 thousand)
- iv. Contributions by companies or other groups are limited to IDR 7.5 billion (approx. USD 623 thousand).

For DPD (Regional Representative Council) campaigns (Articles 132-133):

- i. Contributions by candidates are unlimited.
- ii. Contributions by individuals are limited to IDR 250 million (approx. USD 21 thousand)
- iii. Contributions by companies or other groups are limited to IDR 500 million (approx. USD 42 thousand).

b. Case Law

We did not locate applicable case law. Please see above.

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

See above.

ii. Political Contribution Laws

See above.

b. Case Law

Did not locate applicable case law. Please see above.

C. Analytical Comparison

No difference observed. See above.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

Businesses are required to maintain accounting records and prepare annual financial statements in accordance with the Indonesian Financial Accounting Standards (SAK is the local acronym), which are mostly adopted from International Financial Reporting Standards (IFRS) as issued by the International Accounting Standard Board (IASB) on 1 January 2009. They must keep journals and ledgers as well as appropriate memorandum records. Entities that have no public accountability are allowed to adopt SAK For Entities That Have No Public Accountability (SAK ETAP), which is simpler than the full SAK.²⁰

Business entities generally use the 1 January to 31 December calendar year as their accounting year. For tax purposes the fiscal year in most cases is also the calendar year; however, companies are allowed to choose a fiscal year that does not start on 1 January. Accounting books and financial statements are prepared using the company's functional currency. An entity may present financial statements using a currency other than its functional currency. Functional currency is the currency of the primary economic environment in which an entity operates; this is usually the currency in which sales prices or costs for the company's goods and services are denominated and settled.²¹ For most business entities in Indonesia the functional currency is generally the Indonesian Rupiah; however, there are a number of companies whose functional currency is a currency

Statutory audit by a qualified auditor is mandatory for the following types of entities, which are required to submit their annual financial statements to the Ministry of Trade:

- i. Publicly-listed companies.
- ii. Companies involved in accumulating funds from the public (such as banks and insurance companies).
- iii. Companies issuing debt instruments.
- iv. Companies with assets of 25 billion Rupiah or more.
- v. Bank debtors whose financial statements are required by the bank to be audited.
- vi. Certain types of foreign entities engaged in business in Indonesia that are authorized to enter into agreements.

²⁰ See Doing Business in Indonesia, PWC, available at <http://www.pwc.de/de/internationale-maerkte/assets/doing-business-in-indonesia.pdf> (last visited March 31, 2015).

²¹ Id.

vii. Certain types of state-owned enterprises.

Audits are conducted based on auditing standards promulgated by the Indonesian Institute of Certified Public Accountants (IICPA). The existing standards are largely based on the Statements on Auditing Standards issued by the American Institute of Public Accountants. The auditing standards will be shifted to International Standards on Auditing within the next few years. Public companies are required to submit to the capital market regulator, Bapepam-LK, audited annual financial statements within three months after the end of the annual financial statements period. For interim financial statements, the submission to Bapepam-LK should be conducted within one month after the date of the interim financial statements if not audited; within two months if statements are reviewed, and within three months if the statements are audited.²²

Under Law No. 8 of 2010, every company is obliged to make and keep a good record of corporate documents for at least ten years. Financial documents include: (i) notes (such as annual balance sheets, annual profit and loss statements, accounts, daily transactions journals or any writing containing information about the rights and obligations and any other matter linked with the business activities of a company); (ii) book-keeping records; and (iii) financial administrative data.²³

In general, the Board of Directors of a Company is required to prepare and present an Annual Report to the General Meeting of Shareholders (GMS) (after the report has been reviewed by the Board of Commissioners) within six months after the close of the Company's financial year. An Annual Report must be signed by all members of the Board of Directors and the Board of Commissioners who are in office for the relevant financial year.

Certain companies are required to have their financial statements audited by a public accountant, e.g., companies with lines of business relating to the pooling of public funds, companies that issue acknowledgments of indebtedness to the public, public companies, and companies with a turnover of at least IDR 50,000,000,000.

b. Case Law

We did not locate applicable case law. Please see above.

B. Not-For Profit Organizations

a. Laws

No difference observed. See above.

b. Case Law

We did not locate applicable case law. Please see above.

C. Analytical Comparison

No difference observed. See above.

²² Id.

²³ See Corporate crime, frauds and investigations in Indonesia: An Overview, Practical Law, available at <http://us.practicallaw.com/2-520-3416> (last visited April 3, 2015).

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

i. Civil

A company can be faced with significant fines and/or specific measures, which include revocation of business licenses.

Despite the requirement to keep records, there are no provisions under the specific corporate laws that provide for sanctions for failure to maintain financial records.

Under the tax laws (detailed in Item III above), penalties vary depending on the situation, such as late tax payment, late filing, tax underpayment and voluntary amendment of returns. The most common penalty is two percent monthly interest on tax underpaid.

ii. Criminal

Fraud, theft, misappropriation, misrepresentation, deceit, and other corporate crimes are defined under the Indonesian Penal Code. The Police of the Republic of Indonesia are primarily responsible for investigating crimes of fraud under the Indonesian Penal Code. If the scope of the investigation falls within their jurisdiction other government regulators may also investigate, such as: (i) the Indonesia Capital Market Supervisory Agency (Bapepam-LK); (ii) Commission for the Supervision of Business Competition; and (iii) the Corruption Eradication Commission (Komisi Pemberantasan Korupsi) (KPK).²⁴

As corporate or business frauds are criminal acts under the Indonesian Penal Code, the management of the company (those who act on behalf of and in the name of the company) can be held personally liable.

A corporate body can only be subject to criminal liability where this is specifically provided for under statute. The two primary laws that provide for criminal liability of a corporate body are: (a) Law No. 8 of 2010 regarding Prevention and Eradication of Money Laundering Crime (see Questions 18 and 19); and (b) Law No. 32 of 2009 regarding Environmental Protection and Management. The anti-bribery and corruption laws are regulated under: (i) Law No. 28 of 1999 regarding Good Governance; and (ii) Law No. 31 of 1999 regarding the Eradication of Corruption as amended by Law No. 20 of 2001.

The prohibition of insider dealing and market abuse is primarily regulated under Law No. 8 of 1995 concerning Capital Markets (Capital Market Law). The Capital Market Law does not apply to violations committed outside Indonesia. The Bapepam-LK is the regulatory authority responsible for investigating potential breaches of laws and regulations on insider dealing.²⁵

B. Not-For Profit Organizations

a. Laws

i. Civil

²⁴ Id.

²⁵ Id.

See above.

ii. Criminal

See above.

C. Analytical comparison

Did not locate applicable case law. Please see above.

D. Statistics on actual penalties for each group (if, available)

See above. Penalties will depend on the type of offense committed.

OVERVIEW CHART

Although not exhaustive of all the similarities and differences discussed in the above sections, this is to help highlight some of the biggest differences or similarities.

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	<ul style="list-style-type: none"> i. limited liability company; ii. single proprietorship; iii. limited partnership company; iv. firm; and v. cooperative. 	<ul style="list-style-type: none"> i. foundations ii. associations, and iii. societal organizations without legal entity status. 	See detailed charts above.
Tax Laws	Must pay taxes. (mainly, corporate income tax, branch profits tax, resource royalty tax, withholding tax, value added tax (VAT) and various other indirect levies, such as tax on land and stamp duty).	Exempt, in some cases.	Whether a non-profit organization has to pay <u>income tax</u> will depend on whether or not the organization is exempt from income tax.
Financial Transaction Laws	Governed by the Investment Coordinating Board (BKPM)., which is responsible for	Governed by the Investment Coordinating Board (BKPM)., which is responsible for	None.

	promoting foreign and domestic investment and approving most project proposals in Indonesia	promoting foreign and domestic investment and approving most project proposals in Indonesia	
Auditing/Reporting Requirements	Annual reporting requirements	Annual reporting requirements	Similar substance in reporting documents, but reports to be made at different times and to different governmental agencies.
Penalties	Criminal and civil penalties, ranging from monetary fines to incarceration.	Criminal and civil penalties, ranging from monetary fines to incarceration.	Penalties will depend on the type of offense committed. In some cases, depending on the applicable law, this may be different between a for-profit and non-profit entity.