

DOING BUSINESS

IN INDONESIA



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1 – INTRODUCTION

UHY is an international organisation providing audit, accountancy, business management and consultancy services through financial business centres in around 90 countries worldwide.

Business partners work together throughout the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Indonesia has been provided by the office of UHY's representatives:

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A detailed firm profile for UHY's representation in Indonesia can be found in section 8.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at February 2015.

We look forward to helping you do business in Indonesia.

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2 – BUSINESS ENVIRONMENT

Indonesia is located in the south-east Asian Pacific region and the country is now classified as being in the 'lower middle income' category.

Indonesia is Southeast Asia's largest economy with impressive political and economic track record over the past 10 years. Indonesia's economy is on the rise seeing the country take its position as one of major destination for foreign direct investment as India and China. Its economy is expected to grow from 5 to 6 percent in 2014 and 2015. During 2000-2014, Indonesia's gross domestic product (GDP) annual growth rate averaged 5.1% and GDP per capita \$5,200 at PPP (2014) as reported by Indonesia's national statistics agency (Badan Pusat Statistik).

Indonesia's economy marked the weakest result in five years effected by a slowdown in private and public spending and lower exports. In January 2015, Indonesia posted the highest trade surplus in ten months as imports declined much faster than exports.

On 13 February 2015, the parliament passed the revised 2015 budget that calls for IDR 1,984 trillion in spending and IDR 1,761 trillion in revenue, resulting in a 1.9% fiscal deficit.

Indonesia has nearly 252 million citizens, 50% of whom are under the age of 30. This young population is highly adaptive to new technology and has a low dependency ratio among its workforce. Indonesia is entering a 'sweet spot' as a convergence of its young, working population with that of relatively stable inflation and sustained economic growth is fuelling consumer spending.

Indonesia is a group of democratic nations with significant regional autonomy. It is located along the world's major trade routes and has extensive natural resources.

It is a top-ten market for US agricultural products and within the top 30 overall markets for US exports. Indonesia has ratified the Cape Town Treaty, which gives US aircraft exporters access to financing through international protection and registration of financial interests.

Indonesia can be considered one of the richest countries on earth in terms of its biological diversity. The country is located between Asia and Australia, and comprises more than 17,000 islands that stretch 5,000km from east to west. Because of its complex geographical make-up and unique bio-geographical position, Indonesia has enormous ecosystem diversity as well as a fascinating history and heritage.

Its climate and highly fertile soil due to volcanic activity make it suited to the cultivation of high value agricultural commodities such as palm oil, rubber, coffee and cocoa. The huge availability of land and the low levels of productivity in many of these key crops give the scope for increased output.

Indonesia has undertaken business registration reforms in stages making it easier to start a business. Starting 2015, the Ministry of Law and Human Rights is allowed to electronically issue the approval letter for the deed of establishment. This reform applies to both Jakarta and Surabaya.

POPULATION AND CULTURE

The country is unique in many ways as the biggest archipelago in the world. In terms of human diversity, with nearly 252 million inhabitants, the country ranks as the fourth most populous nation in the world and the third largest democracy. It is also the world's largest Islamic nation, where a constitutional freedom to practice other religions sees major groups of Christians, Buddhists, Hindus and other faiths existing side by side.

There are approximately 336 distinct recognised cultures that share more than 250 spoken languages. The lingua franca, Bahasa Indonesia, was adopted only 77 years ago and is now widely used throughout this vast land, serving as a means of communication and as a unifying factor.

Indonesia is diverse and is among the most culturally rich countries on earth. Add to this its enormous mineral, marine and natural resources and it is evident that it ranks as a major economic force in the region.

FOREIGN INVESTMENT

Following the economic and financial crisis that hit the country in 1997, the Indonesian government recognised the important role foreign investment needed to play in the reconstruction of the Indonesian economy. During the following years, successive governments enacted legal and regulatory reforms designed to make Indonesia a competitive destination for foreign direct investment.

ECONOMY

The currency in Indonesia is the Indonesian Rupiah (IDR).

The economy expanded 5.0% in 2014, which was below the 5.6% growth tallied in 2013.

In February 2015, Indonesia's national statistics agency (Badan Pusat Statistik) incorporated two significant revisions to Indonesia's GDP statistics: (1) it shifts the basis of the computation from the year 2000 to 2010 and (2) it updates Indonesia's national accounts from the 1993 System of National Accounts [SNA] to SNA 2008. The impact of improved measurement of output is in a higher *level* of GDP. According to the World Bank, these revision stand out about 4.4 percent larger than previously estimated in 2014 (and 5.2 percent larger on average over 2010-2014). On the other hand, it also results in the measured *rate of growth* of the economy since 2011 being lower, by a significant 0.3 percentage points in 2011, about 0.2 percentage points in 2012 and 2013, and a marginal 0.04 percentage points in 2014.

TABLE 1

Indonesia GDP						
	2010	2011	2012	2013	2014	2015*
GDP (in billion US\$)	539.4	706.6	846.8	878.0	868.3	n/a
GDP change %	6.1	6.5	6.2	5.8	5.1	5.2
GDP per capita (in US\$)	2,984	3,467	3,546	3,468	3,631	n/a

Source: World Bank, ADB, Indonesian Statistics Bureau

*:forecast

INTEREST RATE

In Indonesia the interest rate decisions are taken by Bank Indonesia (Indonesia Central Bank). Bank Indonesia surprisingly lowered its benchmark interest rate by 25 bps to 7.5 percent in February 2015 in order to boost growth and bring inflation back to target. It is the first rate cut since 2011. The central bank now targets inflation between 3 and 5 percent in 2015. Consumer prices slowed to 6.96 percent in January 2015, from a 12-month high of 8.36 percent in December 2014.

INFLATION

Inflation in Indonesia is traditionally low in the period March to May due to the impact of the harvest season on food prices and therefore Indonesia's annual inflation pace to continue its easing trend.

TABLE 2

Inflation in Indonesia 2008-2014

	2008	2009	2010	2011	2012	2013	2014
Inflation (annual percent change)	9.8	4.8	5.1	5.4	4.3	8.4	8.4

Source: The World Bank

NATURAL RESOURCES

Indonesia is gifted with diverse natural resources. In energy and mining, Indonesia is the world's leading thermal coal exporter, the largest tin exporter and home to deposits of precious metals such as gold, silver and copper. Located on the Asia Pacific 'Ring of Fire' with over 40% of the world's proven geothermal energy reserves, Indonesia has access to huge renewable energy sources to meet its domestic needs. Indonesia was the only South East Asian member of OPEC until 2008 and continues to be a major liquid natural gas (LNG) exporter.

BATAM FREE TRADE ZONE (FTZ)

For many years, there has been special treatment for Batam as a special bonded zone (BZ) with more value added tax (VAT) facilities than are awarded to ordinary BZs. The entire Batam area is denominated as a special BZ. A company here can only have a BZ status based on specific approval by the Ministry of Finance (MoF).

These Batam BZ companies are entitled to the same VAT (and customs) facilities as BZ companies outside Batam. However, the VAT and luxury of sales tax (LST) in Batam are levied gradually on a selective basis on taxable goods and services purchased or consumed by Batam companies.

Currently, there are several taxable goods that have been imported and delivered in/to Batam companies and these will attract VAT:

- Motor vehicles
- Cigarette and tobacco products
- Alcoholic drinks
- Electronic goods.

Since 1 January 2004, the utilisation or consumption of foreign taxable services or foreign taxable intangible goods has been subjected to self-assessed VAT. As of 1 January 2006, the delivery of taxable services within or to Batam, has not yet attracted VAT.

The government decided against a proposal to turn the entire Batam Islands area into a single free trade zone (FTZ). Instead, it will specify bonded zones into which businesses can import goods duty free. The government also noted that export businesses outside the bonded zones could still make use of bonded warehouses, since the status of the neighbouring Rempang and Galang Islands (the islands closest to Batam) has been decided by the government.

The Batam Authority, which governs Batam and has overseen its rapid economic development, argued that the bonded zone scheme would confuse investors and lead to a heavy local government workload. However, local authorities claimed that bonded zones would enable them to better govern Batam as mandated under Indonesia's decentralisation laws.

LEGAL SYSTEM

The Dutch legal system played an important role in influencing the history of the Indonesian legal system. The Netherlands-Indies government applied the *concordantie* principle in the legal sector of Indonesia during the colonial period. Based on this principle, every law that was passed by the Netherlands parliament would have some influence in the Indonesian territory a few years later, perhaps with just minor changes.

When Indonesia became independent, its 1945 Constitution in Article II of the Transitory Provisions specified that all laws and legislations existing under the Dutch colonial administration automatically became the laws and legislation of the Republic of Indonesia, until such laws were repealed, revoked, amended or found to be contradictory to the constitution. As a result, the business regulations governing Indonesia after independence remained the same as the legislation enacted in colonial times, such as parts of the Civil Code (*Burgerlijk Wetboek*), the Commercial Code (*Wetboek van Koophandel*) and the Bankruptcy Ordinance (*Faillissement Verordening*), until amended by new laws introduced in 1960–2004.

In the 1960s, the government of Indonesia ordained several laws intended to foster investment, such as the Basic Agrarian Law (*Hukum Agraria*) and the Foreign Investment Law (*Hukum Penanaman Modal Asing*).

In the period of 1980–2000, a major overhaul of the laws governing Indonesian business practices resulted in the enactment of several more modern laws, such as the Mortgage Law, the Company Law, the Capital Market Law, the Bankruptcy Law, the Fiduciary Transfer Law and the Arbitration Law, as well as several intellectual property laws including laws on copyrights, patents, marks, industrial designs, integrated circuits and plant varieties.

Similarly, the rules governing commercial litigation procedures under Indonesian law are found in the Indonesian civil procedure law derived from the Dutch colonial civil procedure codes (*Herziene Indonesisch Reglement* – HIR and *Rechtsreglement Buitengewesten* – RBG).

The Indonesian judicial system is organised into three levels. The lower court is the district court (*pengadilan negeri*) established in all districts and municipalities (*kotamadya or kabupaten*) in Indonesia. The first appellate court is the high court (*pengadilan tinggi*) established in all provinces in Indonesia. The highest court is the Supreme Court (*mahkamah agung*). Unlike common law systems, Indonesian civil law does not adhere to strict doctrines of precedent. Every case has to be determined on its own facts and merits. Meanwhile consideration is given to academic theories and prior decisions in similar cases, especially decisions of the Supreme Court.

Indonesia also has separate three-tiered structures or courts for handling disputes in administrative law, military law and Islamic family law. Since 1998, a number of specialised courts have been added to the Indonesian judicial system, including the commercial court, handling bankruptcy and intellectual property matters, the anti-corruption court, the human rights courts and special tribunals for tax, labour and fisheries disputes. Based on recent amendments to the constitution, a constitutional court was established in 2003 and a judicial council is currently in formation. In 2004, the Indonesian Supreme Court began to implement a set of blueprints for a comprehensive judicial reform and has been supported by the Indonesian public and the international community for this effort.

The court system does not provide effective recourse for resolving commercial disputes. The judiciary is nominally independent under the law; however, legal practitioners fear that irregular payments and other collusive practices often influence case preparation and the judicial ruling.

The government recognises the need for judicial reform but has not yet taken action. In several instances the local courts accepted jurisdiction over commercial disputes despite contractual arbitration clauses calling for adjudication in foreign venues.

Indonesia is a signatory to the Convention on the Settlement of Investment.

DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES (ICSID)

So far only one American investment company has brought a case to the ICSID, which ruled in its favour. Indonesia's Arbitration Law recognises the right of parties to apply any rules of arbitration that they may mutually agree upon and provides default procedural rules if no other rules have been designated.

An Indonesian commercial arbitration board (BANI) is available if both parties agree. Companies have resorted to ad hoc arbitrations in Indonesia using the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, as well as others. Other companies in Indonesia have used International Criminal Court (ICC) arbitrations.

On 12 August 1999, Indonesia's parliament passed Arbitration Law Number 30, endowing the district court of central Jakarta with the power to enforce international arbitration awards. Before passage of the new arbitration law in 1999, enforcement lay with the supreme court, which was slow to act on decisions. Since 1999, Indonesian courts have swiftly enforced international arbitration awards – some have been executed within a month of the request for enforcement. The new law greatly reduces instances where district courts fail to apply the law, and legal practitioners predict that the process should improve as more judges educate themselves about arbitration.

Since 1981, when Indonesia joined the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York), fewer than two dozen foreign awards have been registered with Indonesian courts (most of which have been enforced). The domestic and international press have widely publicised recent cases where those awards have not been enforced.

RIGHT OF OWNERSHIP (*HAK MILIK*)

A *hak milik* is the most entire right (land tenure) of ownership a person can own over land in Indonesia. This right of ownership has several specific characteristics such as:

- It has no time limit
- It covers all fixtures on the land
- Only Indonesian citizens and certain Indonesian legal entities (*badan hukum*) may have a *hak milik*
- It can be transferred freely among Indonesian citizens and certain legal persons.

There is a possibility for having horizontal separation between the owner of the *hak milik* and the owner of a building on the land. The holder of this right of ownership can transfer the land to others.

Under certain special conditions, the *hak milik* has to be converted to other rights, such as a right to build, right of use, or right of cultivation if the holders are foreigners or foreign investment (*penanaman modal asing* – PMA) companies.

RIGHT TO BUILD (*HAK GUNA BANGUNAN* – HGB)

A *hak guna bangunan* is a right of leasehold for the period of 30 years or less and gives authorisation to build and possess a building on land for the holder. This right to build has several characteristics such as:

- There is a possibility that the HGB can be extended for an extra 20 years with the opportunity for renewal
- The title is granted by and registered at the Land Office
- Only Indonesian citizens and Indonesian corporations incorporated in Indonesia and having their legal domiciles in Indonesia (also PMA companies) may hold an HGB
- It is intended for land utilisation as the location for buildings or facilities
- The right to build can be transferred to third parties during its existence
- An HGB is transferred by performing a sale and purchase agreement (*akta jual beli*) in the form of a notarial deed and it must be registered with the Land Office.

Generally, investors constructing industrial projects on industrial land in Indonesia look for an HGB title over the land.

The right to private ownership and establishment in the private sector are assumed as the principal engine of economic growth in Indonesia.

State-owned enterprises (SOEs) also play a dominant role in many sectors, including oil and gas retail and distribution, electric power generation and transmission, civil aviation, banking, and fertiliser production and wholesale distribution.

During the last three years, Indonesia has promoted competition in several sectors and reduced the privileges awarded to SOEs.

The State Ministry for SOEs was formed in 1998 by the parliament. Privatisation plays an important role in its mandate but political opposition has effectively hindered many attempts at privatisation. For the purpose of minimising losses and preparing themselves for privatisation, several provincial governments have made some improvement in their management and transparency of provincially owned firms (BUMDs).

RIGHT TO CULTIVATE (*HAK GUNA USAHA – HGU*)

The specific characteristics of the right to cultivate are outlined below:

- It is issued for state-owned land specifically for estate or plantation activities
- Generally, its duration is limited to 25 years and at most 35 years and there is the possibility of renewal
- It is granted and registered with the Land Office
- HGU is transferable to third parties by performing a sale and purchase agreement (*akta jual beli*) in the form of a notarial deed. It must be registered with the Land Office afterwards for the completion of transfer registration
- This HGU can be held by Indonesian individuals or legal entities, including PMA companies.

RIGHT OF USE (*HAK PAKAI*)

The specific characteristics of the right of use are outlined below:

- It is a right to use and/or collect produce from land administered by the state or owned by another person
- It is limited in duration by the contract or decree
- It is usually for a 25-year period with the possibility of renewal and subjected to specific restrictions on the intended use of the land
- Indonesian citizens, Indonesian corporations, foreign residents and foreign corporations under the Basic Agrarian Law can hold a *hak pakai*
- It needs the permission of the relevant authorised officer for the transfer of a *hak pakai* over state land
- If it is accorded with a contract granting the right, transfer of a *hak pakai* over land owned by private citizens can take place.

OBTAINING LAND TITLES BY PMA COMPANIES

One important procedure has to be followed by a new prospective PMA company which needs land or real estate to perform its business – the processing of the location permit.

With a location permit, a PMA company is allowed to acquire the land that is needed for its operation. The location permit also allows for the transfer of rights and for utilising the land for its investment.

The location permit has to be obtained from the Regent (*Camat*) with jurisdiction where the land is located. The PMA company has to process the relinquishing of the land from its original land owners within 12 –36 months (depending on the acreage of land) after the issuance of the location permit.

The company permit needs to be carefully observed if a location permit was previously obtained, for example, the property purchase should be in compliance with it. The investment licence also needs to have a provision on the land. Thus, if the properties that have been purchased by the company have more than the acreage stated in its investment licence, this action will not be permitted unless the company first submits an application with the Investment Coordinating Board (BKPM) for a revision of its investment licence to include a larger land area. It is expected for a company to use the land in compliance with the terms of the decree and investment approval obtained granting its right to the land.

PROTECTION OF PROPERTY RIGHTS

Foreign entities have no freehold rights to land ownership in Indonesia. Foreign investors' land holdings are usually obtained through long-term lease agreements (normally for 30 years) with the government or private parties. These lease holdings can be used as collateral. Government regulations allow mortgages to be registered against real property and seagoing vessels in their appropriate registries, as well as security interests in chattel, equipment, accounts receivable and insurance proceeds. A search facility currently exists only for mortgages. The lack of transparency in Indonesia's courts means uncertainty whether security interests will be recognised and enforced. Foreign companies may also establish a limited company under Indonesian law that can legally obtain rights to land.

The court system does not provide effective recourse for settling property disputes. The new era government and Indonesia's decentralisation process unleashed a flurry of new land claims by local residents against companies, often operating on government-granted concessions located in their communities. The problem of incomplete or inaccurate record keeping is compounded by an ineffective and corrupt enforcement system.

In May 2003, the US government again placed Indonesia on the Special 301 Priority Watch List for inadequate protection of intellectual property rights (IPR), where Indonesia has been since the 1980s. The Indonesian government has steadily improved the regulatory and legal framework for the protection of IPR; however, enforcement continues to fall short. US businesses reported that Indonesia ranks as the third largest producer of pirated products. They maintain that 90% of all CDs (audio, video and software) sold in Indonesia are pirated and estimate that industry suffered losses in 2002 of USD 253 million, a 33% increase over the prior year.

Indonesia's new copyright law (Law 19/2002) takes effect on 29 July 2003. The new law increases fines up to IDR 500 million (USD 62,000) and provides for prison terms of up to five years for dealers of pirated materials. The law directs cases of alleged copyright violations to be tried in commercial courts and for the rendering of judgments within 90 days. As part of the law's implementation, the Ministry of Industry and Trade plans to issue optical disc regulations that would enhance the government's ability to identify and prosecute producers of pirated products. In an effort to enhance interagency coordination on enforcement, Indonesia's Ministry of Justice recently formed an IPR task force made up of the national police, customs, attorney general, judiciary, and members of the computer software and entertainment industries. The task force has already conducted a few high profile raids.

Indonesia is a member of the World Intellectual Property Organisation No. 50 and the said treaty entered into force in the Republic of Indonesia on 15 February 2005. Indonesia has acceded to numerous international conventions on intellectual property rights, including the Paris Convention for the Protection of Intellectual Property, the Berne Convention for the Protection of Literary and Artistic Works (with a reservation on Article 33), the Patent Cooperation Treaty, the Trademark Law Treaty and the Nice Agreement for the International Classification of Unclassified Goods and Services.

PATENTS

The current patent law dates from 2001, which amended and consolidated in a single text all previous legislation. In 1997, Indonesian law extended the term of patent protection to 20 years from 14 years, and maintained the provision for a two-year patent extension. The amendment allows for the patenting of plants and animals. However, some of the weaknesses of the old law persist. Chief among these flaws is the requirement that an inventor must produce a product or utilise a value-added process in Indonesia in order to obtain patent protection for the product or process. Inventions that are contrary to Indonesian laws and regulations are excluded from patent ability, and the standard for excluding inventions without domestic content appears to be inconsistent with Trade-Related Aspects of Intellectual Property Rights (TRIPS) requirements.

As of 1 August 2001, Indonesia ordained the Patents Law (Law Number 14 of 2001).

There is a difference between local and foreign applicants. Local patent applicants may apply for patents through the Directorate General of Intellectual Property Rights (DGIPR), the Department of Law and Human Rights. Meanwhile, foreigners have to submit an application through a patent consultant in Indonesia. The DGIPR acknowledges an international application entering the national phase (PCT application). In order to receive a patent, an invention must meet each of the following criteria: novelty, inventive step and industrial applicability.

There are two types of patents in the Patents Law:

- Standard patent
 - Protects an invention with a claim and comprises process/manufacture, machine/apparatus, product, composition of matter (including chemical compound and microorganism). This has 20 years protection from the filing date and is non-renewable
- Simple patent
 - Gives some protection to the invention of new apparatus, equipment or products that have value because of their shape, configuration, construction or composition. It has ten years protection from the filing date and no extension.

TRADEMARKS

Indonesia enacted its new trademark law on 1 August 2001. Like the new patent law, the latest version consolidated into one text a series of trademark laws enacted over the past 20 years. The new law raised the maximum fine for trademark violations to IDR 1 billion (USD 95,000) and slightly reduced the maximum possible prison term. The government justified this move by claiming that financial penalties were a greater deterrent to IPR violators than imprisonment. Foreign rights holders, arguing that most IPR cases never result in the maximum sentence, had pushed for minimum sentencing guidelines rather than higher fines.

The trademark law provides for the determination of trademark rights by priority of registration, rather than by priority of commercial use. The law also provides for the protection of well-known marks, but offers no administrative procedures or legal grounds under which legitimate owners of well-known marks can cancel pre-existing registrations. Currently, the only avenue for challenging existing trademark registrations in Indonesia is through the commercial courts, which generally have issued decisions within three months upholding legitimate trademarks.

The Law Number 15 of 2001 is the law that regulates the marks for goods and services. This Marks Law upholds a first-to-file principle where the state grants the right of a mark to a person who has registered his/her mark at DGIPR.

A mark cannot be registered where:

- The application is made in bad faith
- The mark is in contrary to public order, morality and existing laws
- There are no differences
- The mark has been in a public domain
- The mark is a description of the goods or services
- The mark has a similarity in principle or in its entirety to another registered mark for the same goods
- The mark is alike in principle or in its entirety with a well-known mark for the same goods
- The mark has a similarity in principle or in its entirety to a well-known geographical indication
- It is the name of a famous person
- The mark is similar to the name or abbreviation, flag, logo, symbol of the state or national institution or international institution
- The mark is similar to the sign or stamp or official stamp used by of the state or government institution.

REGISTRATION PROCEDURE

For the registration of a mark, an application has to be submitted in the Indonesian language to the DGIPR with the required documents such as a power of attorney, a declaration of ownership and 25 labels of the mark concerned.

The application must be registered through an Indonesian proxy by way of a power of attorney for any applicant with a domicile outside Indonesia.

Applications which do not satisfy all of the formal requirements will be returned for completion and/or remedial actions, for which a remedial period of two months (or three months for applications with a priority right) in principle is granted.

Applications that are complete and meet all of the formal requirements will be examined by the DGIPR for approval or rejection. This process should not take longer than nine months. Upon the issuance of the registration approval by the DGIPR, the application is published in the Official Marks Gazette (*Berita Resmi Merek*) for three months. When the application for a mark is rejected then the applicant may submit an objection or a response to DGIPR within 30 days as of the date of the rejection letter. A mark is registered for ten years from the filing date.

3 – FOREIGN INVESTMENT

TREND OF INVESTMENT REALIZATION FROM 2012 TO DECEMBER 2014

Based on the investment realization data from the period of 2012 to December 2014, there was a significant growth in each quarter for foreign direct investment, and around 42 % of total investment realization is derived from the expansion of existing business. It underlines that investment in Indonesia is on a high level of sustainable performance. Foreign Investment Coordinating Board (BKPM) targets a 14 percent (year-on-year) increase in total direct investment in 2015. This target involves FDI of IDR 343.7trillion.

TABLE 3
Investment Realization

	<i>in IDR trillion</i>		
	2012	2013	2014
Q1	51.5	65.5	72.0
Q2	56.1	66.7	78.0
Q3	56.6	67.0	78.3
Q4	56.8	71.2	78.7

Source: BKPM release, Investment in 2014

Key Facts:

The total FDI realization in 2014 was Rp 307trillion, increased by 13.5% compared to 2013 (Rp 270.4trillion).

TOP INFLOW FDI INVESTORS: INTO INDONESIA, BY COUNTRY

The top five countries investing in the Indonesia in 2014 by value (in USD billion)

TABLE 4

Singapore	USD 5.8
Japan	USD 2.7
Malaysia	USD 1.8
Netherland	USD 1.7
United Kingdom	USD 1.6

Source: BKPM release, Investment in 2014

Key Facts:

Singapore leaps Japan as the largest investor in Indonesia in 2014. Singapore was the largest investor in Indonesia between 2010 and 2012. Previously in 2013, Japan replaced Singapore as the largest investor and invested USD \$4.7 billion particularly in the automotive sector.

TOP INFLOW FDI INVESTORS: INTO INDONESIA, BY SECTOR

The current top five sectors benefiting from FDI into Indonesia in Q4-2014 (in USD billion)

TABLE 5

Mining	USD 4.7
Food Industry	USD 3.1
Transportation, Warehouse & Telecommunication	USD 3.0
Metal, Machinery and Electronic Industry	USD 2.5
Chemical and Pharmaceutical Industry	USD 2.3

Source: BKPM release, Investment in 2014

INVESTMENT LAW

Law Number 1 of 1967 governs direct foreign investment in Indonesia and was amended by Law Number 11 of 1970 (Foreign Investment Law), with the last amendment being Law Number 25 of 2007.

These laws stipulate that the Indonesian government requires foreign investors who want to perform operations in Indonesia to form a limited liability company. Generally, this refers to a foreign investment company or PMA (*Penanaman Modal Asing*) company.

The Indonesian government agency which issues investment licences is Foreign Investment Coordinating Board (referred to as the *Badan Koordinasi Penanaman Modal – BKPM*). There are also other Indonesian government agencies which issue import licences and permits to employ non-Indonesian workers. The BKPM does not issue licences for investments in banking, financial institutions, insurance, and oil and gas. Instead, these sectors are dealt with by other government agencies under separate legislation. For instance, the Department of Finance governs foreign investment in banking, insurance and stock broking and the Department of Mines and Energy has a role in approving foreign investment in the oil and gas sector.

An important feature of the Foreign Investment Law is the guarantee that the Indonesian government will not nationalise a foreign investment or revoke the investor's rights to control a foreign investment, except where it is declared under Indonesian law to be in the national interest to do so and then only upon payment of a mutually agreeable compensation determined in accordance with the principles of international law. This guarantee is accompanied by assurances that the foreign investor will have the authority to appoint the management of the foreign investment company and the right to repatriate capital in the form of after-tax profits, reimbursements of expatriate manpower expenses, depreciation of fixed assets, and other items. The Foreign Investment Law also provides for arbitration of investment disputes that may emerge between investors and the government, allowing for such disputes to be submitted to international arbitration under rules of the International Convention for Settlement of Investment Disputes (ICSID).

BUSINESS ACTIVITIES OPEN FOR FOREIGN INVESTMENT

Although the Foreign Investment Law is intended to encourage foreign direct investment in Indonesia, it requires the Indonesian government to regulate the fields of business activity that are open to foreign investment and set the priorities and any special conditions to be placed on foreign investments. The Foreign Investment Law also allows the Indonesian government to determine that certain areas are closed to further investment. It also stipulates that industries relating to national defence are to remain totally closed to foreign investment and that certain sector activities which are important to the state and affect the livelihood of the Indonesian population cannot be undertaken by foreign investors alone (ie without local participation).

For years, the Indonesian government has issued a list of desired investments and fields of business activity which are closed to further foreign investment in accordance with the provisions of the Foreign Investment Law. This list is called the Negative List for Investment (*Daftar Negatif Investasi*).

There has been a concerted effort in the preparation of the Negative List to keep the number of restricted sectors at a minimum and to remove numerous conditions which have previously been imposed. Foreign investors are welcomed in this approach, which has significantly opened many sectors of business activity to new investments, both foreign and domestic. The most recent Negative List was issued in 2014, through the Presidential Regulation of the Republic of Indonesia No.39/2014.

In 2014, the government issued a revision to Negative List investment regarding the reduction to the level of new permitted foreign share ownership in the trading sector, onshore oil and gas, telecommunication, etc.

TABLE 6
Key Changes on Investment Regulation

INDUSTRY	KEY CHANGE
Main distributor activities	Maximum 33% foreign ownership (previously 100%)
Onshore oil and gas drilling	Closed for foreign ownership (previously up to 95%)
Data communication system, including content services, call centres	Maximum 49% foreign ownership, reduce from 95%
Internet connection	Maximum 49% foreign ownership, down from 65%
Power plant >10MW	Open for 100% under PPP, up from 95%
Seaport facilities services	Maximum 95% under PPP, up from 49%
Specialist hospital	Maximum 70% ownership from ASEAN countries, up from 67%

Source: BKPM

Sectors that are now open for foreign investment that were previously closed:

- Film promotion facilities and advertising (now 51% for ASEAN ownership)
- Public opinion polling and market research (now 51% for ASEAN ownership)
- Motor vehicle periodic testing (now 49%)
- Land transportation terminal for passenger construction (now 49%)
- Public cargo terminal construction (now 49%)

The list reveals the willingness of the Indonesian government to attract more foreign investments after the substantial decrease in investment that followed the financial crisis which hit Indonesia and Asia in general in the late 1990s. The process of recovery has required gradual improvement in general public security and other actions aimed at making Indonesia more attractive to foreign investment. This has contributed to a rise of foreign investment into Indonesia.

All business sectors are open to foreign direct investment because of recent liberalisation in the investment sector, with the following exceptions:

- Business sectors that are categorised as closed to foreign investment
In 2014, the Government increase sectors closed to foreign investment that previously open or unregulated such as:
 - Onshore/on land oil and gas drilling (previously 95%);
 - Oil and gas well operation and maintenance (previously not specifically regulated);
 - Oil and gas design and engineering service (previously not specifically regulated);
 - Electricity utilisation and installation (previously 95%);
- Sector activities, referred to as 'strategic activities', which are significant for the state and subject to a maximum foreign shareholding of 95%, include:
 - Public harbours and shipping
 - Transmission and distribution of electric power for public use
 - Telecommunications
 - Aviation, public drinking water
 - Public railways
 - Nuclear power generation etc.
- **Sectors that are more restricted for foreign investment:**
 - Import and distribution as main distributors (now 33%, previously 100%);
 - Storage, warehousing (now 33%, previously 100%);
 - Cold storage (now Java, Bali and Sumatra: 33%, from 100%; East Indonesia/ Kalimantan, Sulawesi and Papua: 67%, previously 100%);
 - Horticulture which includes cultivation, seeding and processing (now 30%, previously 95%, amended to be in line with the existing law);

THE BANKING AND FOREIGN EXCHANGE SYSTEM

Exchange rates are issued by the Central Bank on a daily basis for commercial banking purposes. However, for tax purposes (in calculating the Indonesian income tax liability on foreign currency income) the exchange rates are issued on a weekly basis by the Indonesian Ministry of Finance. Foreign exchange controls do not exist currently in Indonesia, however transfers of funds exceeding USD 10,000 from and within Indonesia should be reported to the Central Bank.

INVESTMENT LAW

On 29 March 2007, the parliament passed a new investment law aimed at improving Indonesia's investment climate and attracting greater foreign investment into Indonesia. Law Number 25 of 2007 was signed by the President on 26 April 2007. The law establishes basic investment protections including the following:

- Equal treatment for domestic and foreign investors. However, equal treatment is not applicable to investors from countries which obtain 'special rights based on an agreement with Indonesia'
- The government of Indonesia (GOI) will not undertake any nationalisation action, unless by law. In the event that the GOI 'takes action to nationalise', it will grant compensation with a specified amount based on the market value or arbitration if the two parties do not agree
- Investors may freely transfer assets to other parties, as long as assets are not determined (by law) to be state assets
- Investors may transfer and repatriate capital, profits, royalties, income from asset sales, and other sources, in foreign currency, in accordance with prevailing laws and regulations. However, this does not restrict the right of the GOI to receive taxes or royalties or implement laws and regulations requiring the reporting of the transfer of funds. The GOI may also implement laws to protect the rights of creditors and to avoid losses to the state
- Investment disputes between the government and investors may be settled through international arbitration based upon prior agreement between the parties
- The new law appears to increase the authority of the Investment Coordinating Board (BKPM) in both implementing and proposing investment policy. The BKPM's duties under the law include coordinating and implementing 'one shop' integrated services, developing an investor roadmap, providing consultation to investors seeking capital investments and other investment-related activities. Although the law contains no provision authorising BKPM to approve investments, BKPM approval is needed in order for investors to receive immigration facilities or investment incentives.

THE ROLE OF THE BKPM

Foreign direct investment in the manufacturing, industrial or non-financial services sectors is licensed by BKPM. Investment in the areas of banking, insurance, general mining, oil and natural exploration, production and related activities are licensed by other regulatory bodies.

INVESTMENT APPLICATION

The process of foreign investment begins with the submission of a formal application to the BKPM. The application must include a description of the project including names of participants, total capital required, employment details, a production process description, power requirements and any environmental issues.

An environmental impact study may be required, therefore the articles of association of corporate shareholders, or passports of individuals, should be attached with applications. The BKPM aims to process applications within one month. In practice, approvals may be faster.

CAPITAL REQUIREMENTS

There is a minimum capital requirement for foreign direct investment based on BKPM regulation No. 5 Year 2013. The regulation sets out the threshold more than Rp10 billion or US\$1.2 for PMA establishment. The minimum issued and paid up capital is Rp2.5 billion or equivalent to US\$ 300,000 (25% of authorised capital).

The BKPM will grant approval based on its assessment of the need for the project. Share capital should be paid up in cash or in kind in the form of either tangible or intangible assets. Assets other than cash should be independently appraised. The BKPM can provide a range of facilities including import duty exemptions based on the submission of a 'master list', investment repatriation guarantees and possible tax holidays.

4 – SETTING UP A BUSINESS

In Indonesia, a number of legal entities are recognised for setting up a business.

These business entities are as follows:

- *Persekutuan Perdata* (PP) – a partnership between two or more people in one agreement to make a profit
- *Firma* (Fa) – a partnership between two or more people in one agreement to form a collective name to deal with third parties in making a profit
- *Persekutuan Komanditer* (*Commanditaire Vennootschap* – CV). A partnership between two or more people in one agreement to make a profit. One partner is allowed to invest money into the partnership without having to manage the company.

The above-mentioned types of business are only applicable for local citizens.

For foreign investors, the types of legal entities which apply are outlined below.

REPRESENTATIVE OFFICE

Over recent years, global economic activity has experienced some growth. There are a large number of companies which have expanded their businesses by including operations and offices in foreign countries.

Many companies have their own representative office in other countries (although they may not have production facilities located there) in order to maintain close supervision with the management of foreign business activities.

In Indonesia, a representative office may not own or maintain production facilities or operational activities, and therefore, cannot accept orders, participate in tenders, sign contracts or engage in the importation of goods.

A representative office in Indonesia can be an Indonesian company, an Indonesian individual or an expatriate individual. If the representative office is to be headed by an expatriate, a work permit for the representative has to be applied for together with the application for the representative office licence.

To establish a representative office with permission from the Ministry of Industry and Trade, the company's head office needs to issue three letters:

- i) Letter of intent – stating the intention of the company to establish a representative office
- ii) Letter of appointment – stating the appointment of the chief representative
- iii) Letter of statement – stating that the chief representative will follow Indonesian regulations.

The three letters must be stamped by a notary public and approved by the Indonesian embassy in the home country of the firm. Upon approval, the Indonesian embassy will issue a letter of notification (*surat keterangan*). Upon completion of the four letters the process can continue to the related government ministry in Jakarta, to incorporate a fixed licence for two years.

Other ministries require different types of letters.

LIMITED LIABILITY COMPANY (*PERUSAHAAN TERBATAS – PT*)

Foreign direct investment, often referred to by its Indonesian abbreviation PMA, is governed primarily by the Foreign Capital Investment Law No. 1 of 1967, amended by Law No. 25 of 2007. The law has accommodated various deregulatory policies and measures to date, and should accommodate those that will be taken by the government in the foreseeable future.

In addition to the Investment Law No. 1/1967, PMA companies and other companies are also subject in their business operations to sector/industrial policies as required by corresponding ministries.

ESTABLISHING A COMPANY – INVESTMENT APPROVAL PROCESS

The life of foreign investment companies has been extended by allowing the renewal of the fixed operating licence (IUT) for an additional 30 years. In other words, the initial licences are valid for three years (SPPP BKPM), plus two x 30 years, for a total of 63 years.

The process of incorporation of a new foreign direct investment company involves:

- Requirement for an initial licence (valid for three years)
 - Step 1 – Prepare and send the application with required documentation compiled according to the investment plan, and set up a joint venture agreement if investors plan to make the investment with Indonesian partners
 - Step 2 – Obtain the initial licence (SPPP BKPM), valid for three years
 - Step 3 – Incorporation of SPPP BKPM
 - Establish articles of association with a public notary detailing proof of capital investment, and send this to the Ministry of Justice for approval and issuance in the state Gazette
 - Registration of company address with local council (domicile)
 - Tax identification number (*nomor pokok wajib Pajak – NPWP*)
- Registration with the Department of Industry and Trade (TDP)
 - Step 4 – Key expatriate positions work permits
- Fixed operating licence (30 years)
 - Step 5 – Prepare and send the six-month report (LKPM) to the provincial BKPM office as well as the *Undang – Undang Gangguan* (UUG / HO) nuisance act to the regional office of BKPM
 - Step 6 – Incorporate facilities, master list (*angka pengenal importer terbatas – APIT*) or property ownership
 - Step 7 – Provincial approval for fixed licences (BAP)
 - Step 8 – Fixed licence (IUT) for 30 years is issued.

A limited liability company is established either under foreign shareholders or through a joint venture with Indonesians or wholly owned by Indonesian shareholders and must be approved by the Ministry of Justice. It doesn't matter who the owner of an Indonesian limited liability company is, they must comply with Indonesian law and the entity is considered an Indonesian company. The company can subsequently be changed or sold to the shareholders, foreign or Indonesian.

To get licences for a change of capital and change of owner, applications should be submitted to the BKPM. According to the BKPM, there are no charges to arrange such licences.

OFFSHORE INCORPORATION

In some situations, it may be to an investor's advantage to incorporate their firm offshore while operations are carried out in Indonesia.

The advantages and disadvantages of remaining offshore usually focus on the facilities offered by tax havens in nations like Mauritius and the Cayman Islands. Your management consultant can assist you in making this important decision.

5 – LABOUR

Indonesia issues a range of different classes of visa depending on the purpose of a foreigner's visit.

VISAS

Short visit visas valid for 60 days may be issued on arrival at an official entry point to passport holders from most developed and neighbouring countries. The passport's validity should be at least six months.

Business visas may be issued for business visits not including work. Business visas are issued by Indonesian embassies overseas, based on a letter of invitation from the party to be visited. Business visas may be renewed once in the country for up to a maximum of six months.

Foreigners intending to take up employment in Indonesia, together with any foreign dependents, should apply for a KITAS or semi-permanent residence visa. While much of the preparatory work is done in Indonesia, the visas are issued by embassies overseas based on a temporary stay visa, or 'VITAS', issued by the immigration authorities in Jakarta. A KITAS visa is issued for a year, but may be renewed for up to four years, after which a fresh application is required.

WORK PERMITS

All foreigners planning to work in Indonesia must obtain a work permit in addition to a KITAS visa. Work permits are issued by the Department of Manpower usually concurrently with the VITAS visa. Employment of foreigners must be in the context of an approved manpower plan. Many expatriates are employed as technical advisers. The BKPM will approve a certain number of positions for expatriates as contained in the investment application.

OTHER REQUIREMENTS

All foreign residents must also hold a 'police pass'.

Work permit holders must pay in advance an annual training levy of USD 1,200 before issue or renewal of the work permit. All foreigners holding a KITAS visa require a valid exit/re-entry visa to leave and return to Indonesia. A final 'exit permit only' is required when a work permit is to be cancelled or will not be renewed.

The development of Indonesian employment regulations is progressive and further changes are expected in the coming years. Due to the active involvement of various non-governmental organisations (NGOs), awareness of Indonesian labourers and their conditions of work has increased during the last ten years.

EMPLOYMENT AGREEMENTS

Employment agreements in Indonesia are categorised into:

- Employment agreements for a definite period in which an employment relationship has a definite term or is based on the completion of a certain job (eg employment between a company and an interim worker, or a contract in which a company employs someone to set up a computer network)
- Employment agreements for an indefinite period in which the employment agreement does not have specific term or require completion of a certain job.

6 – TAXATION

The Law of the Republic of Indonesia No. 28 of 2007 (about the third amendment of the Law of the Republic of Indonesia No. 6 of 1983 on tax administration) is the law which governs the tax system in Indonesia.

The current framework of Indonesia's tax laws dates from 1983 with subsequent revisions, most recently in 2007. There are separate laws covering income tax, value added tax (VAT) and sales tax on luxury goods. Other tax laws include the law on the taxing of land and buildings and the law on stamp duty.

Individual articles contained in the laws may be supported by implementing regulations and decrees, government regulations and decrees of the Directorate General of Taxation. The government is committed to a greater intensification of tax collection including increasing the number of registered taxpayers.

INCOME TAX

Income tax is applied to resident corporations and individuals on most sources of increased economic wealth.

For tax purposes, a company is treated as a resident of Indonesia by virtue of its establishment or place of management in Indonesia. A foreign company carrying out business activities through a permanent establishment (PE) in Indonesia will generally have to assume the same tax obligations as a resident taxpayer. Resident taxpayers and Indonesian PEs of foreign companies have to settle their tax liabilities either by direct payments, by withholding by third parties, or a combination of both. Foreign companies that do not have a PE in Indonesia are to settle their tax liabilities in respect of their Indonesian-sourced income by way of the Indonesian party paying the income withholding the tax.

Income tax shall be imposed on any taxpayer in respect of income during a taxable year. Thus, the imposing of income tax is determined by the taxable person/entity and the tax object, i.e. the income. A taxable year is a certain period for imposing the income tax. The taxable year is the calendar year.

The Income Tax Law governs income tax imposition on taxpayers related to income received or accrued in a taxable year. The taxpayer is subjected to tax if that person receives or accrues income. A person/entity receiving income is called a taxpayer under this law. A taxpayer is taxed on the income received or accrued during a taxable year or a fraction of a taxable year, if the tax obligations commence or end in a taxable year.

TAXPAYERS

Taxpayers consist of resident and non-resident tax persons. The resident taxpayer is an individual or an entity. The non-resident taxpayer is a Permanent Establishment (PE) or a non-PE. The resident taxpayer and PE must file an annual tax return.

The individual resident taxpayer is:

- An individual who resides in Indonesia or is present in Indonesia for more than 183 days within any 12-month period, or an individual who in a particular taxable year is present and intends to reside in Indonesia
- An entity resident taxpayer is an entity established or domiciled in Indonesia.

The non-resident taxpayer means:

- An individual who does not domicile in Indonesia or is not present in Indonesia for more than 183 days within any 12-month period
- An entity which is not established or domiciled in Indonesia deriving income from Indonesia other than from conducting business or carrying out activities through a permanent establishment.

The significant difference between a resident taxpayer and a non-resident taxpayer is that a resident taxpayer is taxed on his/her income originating from Indonesia and/or from abroad. However a non-resident taxpayer is taxed on his/her income derived only from Indonesia. Therefore, any individual residing in Indonesia or any individual staying in Indonesia for more than 183 days within a period of 12 months, or any individual who within a fiscal year, stays in Indonesia and intends to reside in Indonesia, is taxed on his/her worldwide income under any name and form whatsoever.

TAXABLE OBJECT

The taxable object is income. An increase in economic benefit (income) derived by a taxpayer which may be used for consumption or to increase the wealth of the taxpayer concerned, under any name and form whatsoever, includes:

- Any remuneration / compensation related with work, services or activities gained from employment or an independent profession, including:
 - Wages, salary, honoraria
 - Doctor's, actuarial, accountant's and lawyer's fees
- Any income or compensation from any business or activity
- Any income from capital including from movable and immovable assets, such as rewards and gains from loan 'haircuts' etc.

WITHHOLDING TAXES

Withholding taxes is the main system by which Indonesian income tax is gathered.

Whenever a specific income item is subject to withholding tax, the tax payer has the responsibility to withhold or collect the tax.

The rates of withholding tax vary according to the nature of the income source. Rates for domestic payments range up to 15%. Payments made overseas on certain sources of income may be liable to withholding tax of up to 20% on Indonesia-sourced income. Applicable tax treaties may reduce the rate of withholding tax.

Generally, the payer is held responsible for withholding or collecting the tax. These withholding taxes are referred to by the relevant article of the Income Tax (PPh) Law, as outlined in the sections below.

ARTICLE 21, INCOME TAX

Taxable income is calculated from the gross revenue less occupation costs (*biaya jabatan*) and pension contributions, including contributions for old age savings.

The regulation of the Director General of Tax per 31/PJ/2009 about the technical guidelines of withholding, payment and filing of Article 21 Income Tax and / or Article 26 Income Tax relate to work, services and tax payer activity.

Employers are needed to withhold Article 21 income tax from the salaries payable to their employees and to pay the tax to the state treasury on their behalf. The same withholding tax is applicable to other payments to non-employee individuals (eg fees payable to individual consultants or service providers). Resident individual taxpayers who don't have a tax ID number (NPWP) are subject to a surcharge of 20% in addition to the standard withholding tax.

ARTICLE 22 INCOME TAX

Article 22 income tax is applicable to the following:

- The import of goods
- The sale of goods to the government requiring payment from the state treasury, the State Budget General Directorate, or certain state-owned companies
- The sale/purchasing of automotives, steel, cement, cigarettes, and paper products
- The sale/purchasing of luxury goods.

TABLE 7

Tax rates – imported or purchased goods

	TAX RATE	TAX BASE
Import of goods – using an importer identification (API)	2.5%	Import value ie cost, insurance & freight (CIF) value plus duties payable
- for certain end customer goods	7.5%	
- for soybeans, wheat and flour wheat	0.5%	
Import of goods – without an API	7.5%	Import value ie CIF-value plus duties payable
The auctioned imported goods	7.5%	Auction prices
Sale of goods to the government and required payment from the state treasury and certain state-owned companies	1.5%	Selling prices
Purchasing of gas fuel	0.3%	Selling prices
Purchasing of steel products	0.3%	Selling prices
Purchasing of automotive products	0.45%	Selling prices
Purchasing of paper products	0.10%	Selling prices
Purchasing of cement	0.25%	Selling prices
Purchasing of luxury goods	5%	Selling prices

Taxpayers without an NPWP are subject to a surcharge of 100% in addition to the standard tax rate.

ARTICLE 4 (2) – FINAL INCOME TAX

Resident companies, PEs, representatives of foreign companies, organisations and particular individuals are required to withhold final tax from the gross payments to resident taxpayers and PEs outlined below.

TABLE 8

Final income tax

DESCRIPTION	TAX RATE
Rental of land and/or buildings	10%
Proceeds from transfers of land and building rights	5% or 1% (for transfers of simple houses and apartments conducted by taxpayers engaged in a property development business)
Fees for performance of construction work	2% (for a small qualification service provider) or 3% (for other qualification service providers) or 4% (for non-qualification service providers)
	For contracts signed before 1 January 2008: The new tax rates (as mentioned above) apply for payment contracts or part of the contracts as of 31 December 2008 and onwards The previous tax rates apply for those contracts signed before 1 January 2008
Fees for construction work planning	4% (for a qualification service provider) or 6% (for a non-qualification service provider)
Fees for construction work supervision	4% (for a qualification service provider) or 6% (for a non-qualification service provider)
Interest on time or saving deposits and on Bank Indonesia Certificates (SBIs) other than that payable to banks operating in Indonesia and to government-approved pension funds	20%
Interest on bonds other than that payable to banks operating in Indonesia and government-approved pension funds	15% or if the recipient is a mutual fund registered with the Capital Market Supervisory Board (BAPEPAM), the tax rate is 0% for 2009–2010, 5% for 2010–2013 and 15% thereafter. If the recipient is a non-resident taxpayer, the tax rate is 20% or a lower rate in accordance with the relevant tax treaty
Sale of shares on Indonesian stock exchanges	0.1%
Founder shareholders must pay tax at 0.5% of the market price of their shares upon listing. If they do not opt for this, gains on subsequent sales are taxed under normal rules	
Income from lottery prizes	25%

Forward contract derivatives	2.5% applicable to the initial margin
Certain income received by individual and corporate, except PEs, with gross turnover of not more than Rp 4.8 billion in one fiscal year.	1%

ARTICLE 23 INCOME TAX

The Regulation of the Ministry of Finance No. 244/PMK.03/2008 Income Tax Article 23 concerns certain types of income paid or payable to resident taxpayers. These taxpayers are subject to Article 23 income tax at a rate of either 15% or 2% of the gross amounts.

Article 23 income tax is due at a rate of 15% for the gross amounts on the following:

- Dividends
- Interest, including premiums, discounts and loan guarantee fees
- Royalties
- Prizes and awards.

Article 23 income tax is due at a rate of 2% for gross amounts on the fees of the following:

- 1) Rentals of assets other than land and buildings
- 2) Technical services
- 3) Management services
- 4) Consulting services
- 5) Appraisal services
- 6) Actuary services
- 7) Accounting services
- 8) Design services
- 9) Drilling services for oil and gas mining except for those performed by a PE
- 10) Support services for oil and gas mining
- 11) Mining services other than oil and gas support
- 12) Flight and airport support services
- 13) Forest felling services
- 14) Waste processing services
- 15) Labour supply/outsourcing services
- 16) Intermediary/agency services
- 17) Custodianship and storage services except for those performed by stock exchanges (KSEI and KPEI)
- 18) Sound dubbing services
- 19) Film mixing services
- 20) Computer and software-related services
- 21) Installation services (for example, of electricity, machinery, or telephone equipment) except for those rendered by qualifying construction companies
- 22) Maintenance and improvement services (for example, for electricity, machinery, or telephone equipment) except for those rendered by licensed construction companies
- 23) Manufacturing services (*maklon*)
- 24) Investigation and security services
- 25) Event organisation services
- 26) Packaging services
- 27) Provision of space and/or time for the dissemination of information
- 28) Pest eradication services

- 29) Cleaning services
30) Catering services.

ARTICLE 26 – NON-RESIDENTS

Resident taxpayers, organisations and representatives of foreign companies are required to withhold tax at a rate of 20% from the following payments to non-residents:

- On gross amounts :
 - Dividends
 - Interest, including premiums, discounts (interest), swap premiums, and guarantee fees
 - Royalties, rents and payments for the use of assets
 - Fees for services, work, and activities
 - Prizes and awards
 - Pensions and any other periodic payments
 - After-tax profits of a branch or PE.
- On estimated net income (ENI), being a specified percentage of the gross amount as shown in the table below.

TABLE 9

Tax rates on estimated net income (ENI)

	ENI	EFFECTIVE TAX RATE
Insurance premiums paid to non-resident insurance companies:		
• by the insured	50%	10%
• by Indonesian insurance companies	10%	2%
• by Indonesian reinsurance companies	5%	1%
Sale of non-listed Indonesian company shares by non-residents	25%	5%
Sale by non-residents of a conduit company where this company serves as an intermediary for the holding of Indonesian company shares or a PE	25%	5%

Where the recipient is resident in a country which has a tax treaty with Indonesia, the withholding tax rates may be reduced or exempted.

PERIOD OF TAX PAYMENT AND TAX RETURN FILING

TABLE 10

Monthly tax obligations

TYPE OF TAX	DEADLINE FOR TAX PAYMENT	DEADLINE FOR TAX RETURN
Article 21/26 Income Tax	The 10th of the following month	The 20th of the following month
Article 23/26 Income Tax	The 10th of the following month	The 20th of the following month
Article 25 Income Tax	The 15th of the following	The 20th of the following

	month	month
Article 22 Income Tax – tax collector	The 10th of the following month	The 20th of the following month
Article 4(2) Income Tax	The 10th of the following month	The 20th of the following month
VAT and LST – taxable enterprise	Before submitting the tax return in the following month	The end of the following month
VAT and LST – taxable collector	Before submitting the tax return in the following month	The end of the following month

TABLE 11
Annual tax obligations

TYPE OF TAX	DEADLINE FOR TAX PAYMENT	DEADLINE FOR TAX RETURN
Corporate income tax	The ending of the fourth month after the book year end before filing the tax return	The ending of the fourth month after the book year end
Individual income tax	The ending of the third month after the book year end before filing the tax return	The ending of the third month after the book year end
Land and building (L&B) tax	Six months after the receipt of a Tax Due Notification Letter (SPPT) from DGT Office	N/A
Duties on the acquisitions of L&B rights	On the date of acquisition	N/A

EXTENDED FILING DEADLINE

In terms of the annual income tax return, there is a possibility for taxpayers to extend their filing deadline up to two months. This can be done by filing a written notification to the DGT before the deadline and attaching a tentative tax calculation. Based on the tentative calculation, the tax due will have to be settled before submitting the extension notification. A 2% of interest penalty per month is applicable to the difference until the shortfall is paid whenever the actual tax is due if the final tax calculation is higher than the tentative calculation.

TAX RATES

CORPORATE INCOME TAX RATES

The applicable corporate tax rate starting 2010 is a flat rate 25% (Article 17). There is a 5% tax discount in the standard rate for public companies that meet a minimum listing requirement of 40% and other conditions. This provides an effective tax rate for these companies of 20% in 2010 and afterwards.

TAX CUT FOR PUBLIC COMPANIES

Starting from 1 January 2008, a 5% corporate tax discount is awarded to public companies who meet the following conditions:

- They have at least 40% public ownership of their paid shares
- The companies must comprise 300 individuals at a minimum and each individual holds less than 5% of their paid-in shares
- These two considerations must be fulfilled for at least six months (183 days) in a tax year.

However, discounts will not be applicable for those years where either or both of the conditions are not fulfilled.

Small enterprises are entitled to a tax discount of 50% of the standard rate for a taxable income, which is imposed proportionally on taxable income of the part of gross turnover up to IDR 4.8 billion. 'Small enterprises' are corporate taxpayers with an annual turnover of not more than IDR 50 billion.

Certain smaller enterprises having gross turnover of not more than Rp4.8 billion are subject to Final Tax at 1% of turnover.

INDIVIDUAL INCOME TAX

MAIN PERSONAL RELIEF

TABLE 12

Annual non-taxable income (PTKP) for resident individuals

	IDR
Taxpayer	24,300,000
Spouse	2,025,000
Each dependent (maximum of three)	2,025,000
Occupational expenses (5% of gross income, maximum IDR 500,000/month)	6,000,000
Employee contribution to <i>Jamsostek</i> for old age security savings (2% of gross income)	Full amount
Pension maintenance expenses (5% of gross income, maximum IDR 200,000/month)	2,400,000

The rates of withholding tax vary according to the nature of the income source. Rates for domestic payments range up to 15%. Payments made overseas on certain sources of income may be liable to withholding tax of up to 20%. Applicable tax treaties may reduce the rate of withholding tax.

NORMAL TAX RATES

The income tax is based on how much income a taxpayer earns annually.

TABLE 13

Tax rates for resident individual taxpayers

BAND	EARNINGS (IDR)	TAX RATE
I	0–50,000,000	5%

II	50,000,000–250,000,000	15%
III	250,000,000–500,000,000	25%
IV	More than 500,000,000	30%

CALCULATION OF INDIVIDUAL TAXABLE INCOME

Taxable income is calculated after allowable deductions. For individuals there are income tax exclusions which are set at relatively low income levels. Individuals are broadly liable to income tax on cash income. Benefits-in-kind provided by employers to employees are not taxable to individuals but are non-deductible against corporate taxable income. Employers are required to withhold income tax from employees and pay to the state treasury every month.

Employers prepare a consolidated annual tax return detailing each employee's individual tax calculation. The employee should then file a separate personal return. Tax returns should be filed by 31 March of the year following the year of assessment.

Taxable business profits are computed on the basis of normal accounting principles as modified by certain tax adjustments. Generally, a deduction is allowed for all expenditure incurred to obtain, collect and maintain taxable business profits. A timing difference may arise in respect of when an expenditure recorded as an expense for accounting can be claimed as a deduction for tax.

Corporate taxable income is calculated after the deduction of most normal business expenses. Rates of depreciation are regulated, although taxpayers may elect either the straight line or double declining method. Provisions that are not deductible are employee benefits-in-kind as mentioned above.

Companies may choose to be taxed on the basis of a financial year other than the calendar year. Books of accounts may be kept in English based on the DGT's approval. Foreign currency ie US dollars may be used as the reporting currency if appropriate approval is obtained. Annual filings should be lodged within three months of the financial year, though an extension may be obtained.

PAYMENT OF TAXES

Taxes are paid by monthly instalments on a current year basis. The regular instalment amount is based on the previous year's filings after taking credit for withholdings at source. Any shortfall should be settled by the 25th day of the third month following the end of the financial year. Overpayments of tax may be recovered, but only after a tax audit has been completed. The self-assessment principle, however, underpins Indonesian income tax law. A substantial part of individual income is collected by way of withholding by third parties.

VALUE ADDED TAX

The Law of the Republic of Indonesia number 42 of 2009, the third amendment of the Law No 8 of 1983 about the Value Added Tax and Luxury Sales Tax, regulates value added tax (VAT) and luxury sales tax (LST).

VAT is applicable to the import and delivery of most goods and services. Insurance and banking are not subject to VAT.

The standard rate of VAT is 10%. The export of goods is zero-rated.

Effective as of 1 January 2014, a tax subject with a total turnover under IDR 4,800,000,000/year is not subject to VAT registration (being considered a small enterprise)

Taxpayers are required to submit a tax return in the following month and shows details of all output and input VAT. The net output VAT is payable before the end of the following month. Any excess of input VAT may be carried forward to the following month or refunded.

Suppliers who trade with so called 'VAT collectors' will not collect VAT from their customers or clients. The VAT is paid direct to the state treasury. Such suppliers may be in a constant overpayment situation and may be forced to seek regular refunds.

Value added tax (VAT) is typically due on events involving the transfer of taxable goods or the provision of taxable services in the Indonesian customs area. According to Article 4 of the Indonesian VAT Law, VAT is imposed on:

- Deliveries of taxable goods in the customs area
- Importation of taxable goods
- Rendering of taxable services in the customs area
- Use or consumption of intangible taxable goods in the customs area on goods obtained from outside the customs area
- Use or consumption of taxable services in the customs area of services originating from outside the customs area
- Export of taxable goods.

The delivery of taxable goods is defined very broadly and includes the following:

- Deliveries of a title to taxable goods according to an agreement
- Transfers of taxable goods according to a leasing-with- option or a finance-lease agreement
- Deliveries of taxable goods to an intermediary trader or an auction official
- Own-use and/or free gift of taxable goods
- Remaining taxable goods and certain assets, which were originally not for sale, at a company's dissolution
- Deliveries of taxable goods within a company (e.g. between branches, or between the head office and its branches) unless the company centralises its VAT reporting (subject to the DGT's approval)
- Deliveries of goods on consignment.

NON-TAXABLE GOODS AND SERVICES

There are several kinds of goods which are excluded as taxable goods in Article 4A of Indonesian VAT Law. They are:

- Products of mining and drilling that are extracted directly from the source, for example crude oil, natural gas, geothermal energy, sand and gravel, coal (before processing into coal briquettes), iron ore, tin ore, copper ore, gold ore, silver ore and bauxite ore
- Basic commodities for public consumption e.g. rice, salt, corn, sago and soy beans
- Food and beverages served in hotel, restaurants and other such places
- Money, gold, valuable documents and securities.

NON-TAXABLE SERVICES

There are also several types of services that are excluded from VAT as follows:

- Medical health services
- Social welfare for example orphanages and funeral services
- Postal delivery
- Banking, insurance and financial leasing services
- Religious services
- Education
- Culture and entertainment which has been imposed regionally
- Entertainment tax
- Broadcasting services not including advertising
- Shipping and inland public transportation and international air services
- Transport
- Manpower
- Rendering of services by the government to run the government
- Hotel services.

VAT MECHANISM

In general, taxpayers who provide taxable goods or perform taxable services have to impose VAT to the buyer. The imposing of VAT is performed by withholding a 10% VAT rate of the tax base. VAT on the export of taxable goods is fixed at 0%. The effective VAT rate on deliveries and import of tobacco products is 8.5%.

The taxpayer has to make a tax invoice as evidence for this VAT withholding. The tax invoice is made when selling and it is called the output tax invoice. The VAT withheld is called output tax.

When taxpayers buy taxable goods or taxable services, they have to pay an additional payment of VAT which is withheld by their supplier. This VAT is called the input tax and the withholding proof is called the input tax invoice.

Taxpayers have to calculate how much they withhold in output tax and how much input tax they have in a month period. The output tax in a month is subtracted or credited to the input tax in a month. If the result is positive, taxpayers have to pay in to a government account. If the result is negative, the taxpayer can ask for restitution from the government.

VAT REPORTING

Companies and individuals as taxable enterprises are required to report their business activities and settle VAT liabilities on these every month. VAT is usually to be accounted for on a decentralisation basis. As a result, a company carrying out business activities through a number of business units (branches) in the working areas of different district tax service offices (KPP) must register each unit with the relevant KPP. It is in this context that internal deliveries of taxable goods within a company are subject to VAT.

Subject to DGT approval, a company may centralise its VAT reporting and so may exclude internal deliveries of taxable goods from the scope of VAT. To obtain DGT approval, a company must satisfy a number of conditions, including sales administration centralisation and the removal of the business units to be centralised from any deliveries of taxable goods. However, companies who file e-tax returns may choose to centralise their VAT reporting without satisfying the other conditions; they simply need to submit written notification to the DGT.

Companies registered with certain tax service offices (KPP PMA, KPP Badora, KPP Go Public, LTO, and MTO tax offices) are required to centralise their VAT reporting.

VAT liabilities are typically settled by using an input-output mechanism. A vendor of taxable goods or a taxable service must typically charge VAT to the buyer. From the vendor's perspective, it is an output tax. The buyer has to pay the VAT to the vendor. From the buyer's perspective, it is an input tax. To the extent that the goods are necessary for running the buyer's business, the input tax can be credited against the buyer's own output tax. Similarly, the vendor can also offset the output tax against input tax on the acquisition of taxable goods or taxable services. If the accumulated output tax for a particular month exceeds the accumulated input tax for the same period, the taxpayer in question has to settle the difference by the 15th of the month following. If, however, the accumulated input tax for a particular month exceeds the accumulated output VAT, the taxpayer may ask for a monthly refund or carry over the overpaid VAT to the following months. Import VAT on goods and self-assessed VAT on the consumption or use of foreign taxable services or intangible goods should be understood in the context of the standard input-output mechanism.

Because a non-resident vendor or service provider cannot charge VAT (cannot, in other words, issue tax invoices) to the Indonesian buyer/importer, the Indonesian buyer/importer has to pay the VAT for and on behalf of the non-resident vendor or service provider. To the degree that goods/services imported or procured are necessary for running the importer/service recipient's business, the input VAT (import VAT and self-assessed VAT) is claimable as a tax credit.

A deviation from the standard mechanism, however, is in force for deliveries of taxable goods and services to VAT collectors. The VAT collector is currently either the state treasury or PSC companies (including Pertamina).

OTHER TAX CONSIDERATIONS

SALES TAX ON LUXURY GOODS

Sales taxes also include a sales tax on luxury goods (PPnBM or LST). This tax applies at the point of import or manufacture and is additional to VAT. It is a non-creditable one-off tax and applies to a wide range of goods. According to Law, LST rate maybe increased up to 200%. Currently, the rates range from 10–125%.

In addition to VAT, deliveries or imports of certain manufactured taxable goods may be subject to LST. A particular item will only attract LST once i.e. tax will be charged either on importation of the goods or on delivery by the (resident) manufacturer to another party. LST must be accounted for every month together with VAT. The importer or the manufacturer of the goods is held responsible for the settlement of LST.

To ascertain whether or not a particular item is subject to LST and to identify the LST rate, reference should be made to the Customs Book using the relevant harmonised system (HS) code.

SPECIAL INDUSTRY RULES

Certain industries, in particular production sharing contractors, mining companies under contracts of work and geothermal projects are subject to income tax in accordance with specialist rules. Rates of tax vary according to the generation of each respective contract.

TAX TREATIES

There are currently 65 tax treaties in force with other countries. Provisions typically include reduced withholding tax rates on interest, dividends and royalties and a broader definition of the concept of permanent establishment compared with domestic law.

7 – ACCOUNTING & REPORTING

The history of the Indonesian national GAAP (PSAK) began when the Indonesian Accountants Association (IAI), established in 1957, was appointed by the government of Indonesia in 1984 to develop accounting standards to be used mostly for limited liability partnerships.

The IAI then established a committee to develop accounting standards in Indonesia. This committee, which is responsible for developing and implementing the accounting standards, is called the *Dewan Standar Akuntansi Keuangan (DSAK)*.

The Indonesian PSAK (SFAS) are mostly based on the International Accounting Standards (IAS), which were recently changed to the International Financial Reporting Standards (IFRS). Indonesia completed its first phase of convergence to IFRS in 2012 by adopting IFRS as of 1 January 2009 and continued to the second phase of IFRS convergence aiming for full adoption of IFRS. At the second stage, the DSAK is committed to maintain a one year difference with IFRS as issued by the IASB until ready for full adoption. Therefore, the expectation is to converge Indonesian national GAAP (PSAK) with IFRS as they stood on 1 January 2015 as of 1 January 2016, etc. unless there is a reason not to do so.

As well as the IAI, the government of Indonesia appointed the Financial Services Authority (OJK) formerly the Indonesian Securities Exchange Commission (BAPEPAM LK) to establish additional reporting regulations designed specifically for publicly held corporations.

PRESENTATION OF FINANCIAL STATEMENTS

In compliance with government regulation, every limited liability partnership in Indonesia should prepare its financial statements in accordance with the financial accounting standards established by the IAI.

The Indonesian Financial Accounting Standards (IFAS) require that financial statements consist of an income statement, balance sheet, statement of equity, and a note to the financial statement. With the exception of the cash flow statement, financial statements must be prepared based on the accrual basis, and on the assumption that the company will remain in operation for the foreseeable future.

Financial statements should be prepared annually and audited by a registered public accounting firm if the company meets any one of the following criteria:

- The company is utilising public funds
- The company has issued obligations
- The company is a publicly held corporation.

For a company that meets one of the criteria above, the audited financial statements should then be verified and signed by the board of directors and published in the local Indonesian newspaper.

Moreover, the Minister of Trade and Commerce requires the filing of the audited financial statements for every limited liability partnership that meets the following criteria:

- The entity is a publicly held corporation

- The entity is utilising public funds
- The entity has issued obligations or promissory notes
- The entity has total assets exceeding IDR 50,000,000,000.

ACCOUNTING FOR TAX

For tax purposes, a company's books have to be maintained in conformance with the prevailing accounting standards where in many cases according to functional currency unless the tax law states otherwise. The books must be presented in Rupiah, written in Indonesian and stored in Indonesia.

Foreign-investment (PMA) companies, PEs, and subsidiaries of foreign companies can keep their books in USD and compile them in English with specific DGT approval. A collective investment contract (KIK) may permit the usage of USD accounting where it relates to USD-denominated investment funds. A DGT approval application must be submitted with the DGT office no later than three months before the start of the USD accounting year. The DGT is required to decide on the application within a month. If no decision is made within that time, the application is automatically approved.

Companies that are regulated by a production sharing contract (PSC) or a contract of work (CoW) with the government may apply for USD accounting in English by giving some notification to the DGT in writing. This notification has to be submitted to the DGT office no later than a month before the beginning of the USD accounting year. A company can also compile its books in English but keep them in IDR. In this case, the company must submit a written notification to the DGT no later than three months after the beginning of the tax year in which the books are composed in English. The usage of a foreign language other than English and a foreign currency other than USD in a company's books is not allowed.

Irrespective of the currency and the language used, companies typically have to settle their tax liabilities in IDR (except for PSC companies) and file tax returns in Indonesian. For corporate income tax, the assertions must be presented in USD side by side with IDR in the annual corporate income tax returns.

A company that has obtained approval to maintain USD accounting may return to IDR accounting subject to DGT approval. Once approval is granted, the company may not re-apply for USD accounting approval during the five years after the cancellation of the USD accounting.

8 – UHY REPRESENTATION IN INDONESIA



KAP HANANTA BUDIANTO & REKAN INDONESIA



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- Facebook: Hananta Budianto
- LinkedIn: Hananta Budianto

Year established: 1987
Number of partners: 4
Total staff: 74

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Fax. +62 31 5636075

BRIEF DESCRIPTION OF FIRM

KAP Hananta Budianto & Rekan is a leading public accounting firm in Semarang, Indonesia. We have built an excellent reputation by offering our clients a personalised service that goes beyond traditional accounting practices. Our expansion has resulted in additional offices in Jakarta and Surabaya. The addition of two new partners forced our firm to be relocated its headquarter to Jakarta by the end of 2008.

Our office is registered with Indonesian Central Bank for auditing banks, BAPEPAM for auditing listed companies, BPK RI (the audit board of the Republic of Indonesia) for auditing government companies and The World Bank Group for servicing clients related to World Bank/ADB/IFS funds.

SERVICE AREAS

We provide services to business institutions, not-for-profit organisations (non-governmental organisation (NGOs)), other corporations, as well as private companies, in the following areas:

Audit and Assurance

- General audit of financial statements
- Internal audit



The network
for doing
business



- Special audit/investigation by applying agreed-upon procedures of financial statements
- Due diligence
- Attestation
- Examination of financial forecasts and other prospective financial data
- Financial information review

Corporate Finance

- Mergers and acquisitions
- Liquidations
- Restructuring
- Business planning/reorganisation
- Business valuations
- Feasibility studies

Business Risk Management

Tax

- Planning, compliance, review, general advisory, preparing objection and appeal letter
- Representing tax payer in the tax court as a tax lawyer

Accounting Assistance

Management Consulting

- Quality management systems
- Accounting systems
- Performance management
- Investment proposals
- Government contract consulting
- Job evaluation
- Franchise development
- HR management

PRINCIPAL OPERATING SECTORS

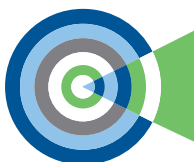
Accounting

LANGUAGES

Indonesian, English.

CURRENT PRINCIPAL CLIENTS

PT Nojorono (cigarette manufacturer)
Kayu Lapis Group (forestry, logging, plywood & CPO agriculture)
Kopi Luwak (drinking coffee manufacturer and Cafe)
Ambarukmo Plaza (Hotel, Function and Mall)
PT Phapros (pharmaceutical industries)
Telogorejo Hospital (hospital)
Zenith Group (pharmaceutical industries)
Erel Group (pharmaceutical industries)
PT KBRI (paper manufacturer)



Estetika Group (clinic and pharmaceutical specialy for skin care)
 Swadesi Group (bank, trading, carpet industries)
 Pura Group (fine paper and high tech printing industries, security paper)
 Sidomuncul Group (herbs, transportation, MLM, printing and distribution)
 Gumaya Hotel Group (hotel)
 Dinasty Group (Chain hotel and the related supporting activities)
 Maitland Smith (furniture manufacturer)
 Unicef (international organization)
 EED - Bread of the World Germany
 Mega Mansion (real estate group)
 Nissin Biscuits Group
 Vantage Drilling Company Indonesia (drilling)
 Teraoka Trans Loader shipyard (docking)
 Posco Indonesia (mining consultant and contractor)
 Portrush - member of Kohler Group USA

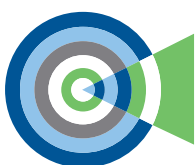
OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST

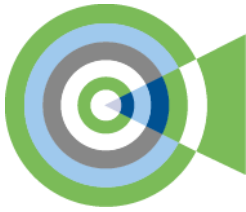
US, UK, France, Italy, Germany, Dutch, Belgium, Singapore, Hong Kong, Pakistan, Taiwan, Japan, Malaysia, UEA, Thailand and Vietnam

BRIEF HISTORY OF FIRM

The firm began as Hananta Multi Consulting in 1984 and expanded with KAP Hananta Budianto & Rekan in 1987, serving mainly small/medium enterprises supported by the Asian Development Bank and World Bank in emerging countries.

The continuing expansion of the firm saw it becoming a leading CPA/consulting firm in Central Java, whereas the partners are active in the Indonesian Institute of Certified Public Accountants (IICPA). The firm joined UHY in 2007 and moved the head office in Jakarta with two branches in Semarang and Surabaya.





LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

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