

DOING BUSINESS IN INDONESIA

Doing business successfully in Indonesia requires some understanding of Indonesian legal and regulatory environments. Many promising changes are underway in Indonesian business environment which will help Indonesia emerge as an attractive destination of doing business and profitable market for Malaysian companies.

SETTING UP BUSINESS ACTIVITIES AND A COMPANY IN INDONESIA

To establish a business in Indonesia, if you do not require a local legal entity for the investment proposed, you could choose to appoint an Agent or Distributor, or set up a Representative Office. Many foreign investors at the early stage of entering the Indonesia market choose to set up an Agency Agreement or Representative Office, then later after the business starts to grow they will apply for a Foreign Direct Investment Company (FDI) status.

REPRESENTATIVE OFFICE

A Representative Office can be established depending upon the line of business and the necessary licenses issued by the related government department. The limitation of a Representative Office is that they are not allowed to conduct direct sales and cannot issue Bills of Lading.

Representative offices are set up primarily for marketing, market research, or as buying or selling agents. The related government ministries are:

- Representative Office from Ministry of Trade - for bilateral trade
- Representative Office from Ministry of Public Work - for consultant or contractor
- Representative Office from Ministry of Energy and Mineral Resources-for mining activities
- Representative Office from Ministry of Finance - for banking
- Representative Office from Investment Board - regional representative

REGISTRATION OF AN AGENT, DISTRIBUTOR OR SOLE DISTRIBUTOR

1. Requirements:

Any national trading company appointed as an agent, distributor, or sole distributor originating from home country and abroad shall be granted a Certificate of Registration issued by Director of Company Registration, Directorate General of Domestic Trade, Ministry of Trade of the Republic of Indonesia.

The Certificate of Registration shall be granted upon request for registration application form to be an agent, distributor or sole distributor provided free of charge.

The application form of registration to be an agent, distributor or sole distributor shall be enclosed by:

- a. Letter of Appointment (**2 original & 2 Certified True Copies**) from the principal manufacturer or principal supplier (in this case, Malaysian company) which is ratified by Notary Public and Ministry of Foreign Affairs Malaysia.
- b. Distributorship agreement (**2 original & 2 Certified True Copies**) between the principal manufacturer or principal supplier (in this case, Malaysian company) and an agent, distributor or sole distributor (in this case, Indonesian company) which is ratified by Notary Public, Ministry of Foreign Affairs Malaysia.
- c. Copy of Memorandum and Article of Association (MNA) (2 full sets) of principal

manufacturer or principal supplier (in this case, Malaysia company) which is ratified by Company Commission of Malaysia (CCM).

- d. Letter of acceptance to be an agent, distributor or sole distributor in Indonesia.
- e. Copy of Trading Operation License (Surat Izin Usaha Perdagangan/SIUP) of Indonesian company.
- f. Covering Letter attention to:

Commercial Attache

Embassy of the Republic of Indonesia

233 Jalan Tun Razak, 50400 Kuala Lumpur

2. The Certificate of Registration can only be granted to one agent, distributor or sole distributor appointed for the same type of goods from certain brand within a certain marketing region. If there is more than one agent, distributor or sole distributor appointed by the manufacturer or supplier, the Certificate of Registration shall be granted to the first applicant.

The Letter of Appointment as referred to in ad. 1a to the above shall at least contains:

- a. Name and address of the Principal Manufacturer or Principal Supplier
- b. Name and address of the agent, Distributor or Sole Distributor
- c. Type or kinds and brand of goods
- d. Marketing region
- e. Period of appointment
- f. Full name and title of the signatory of the appointment

The Distributorship Agreement shall at least contains:

- a. Name and address of the Principal Manufacturer or Principal Supplier
- b. Name and address of the agent, Distributor or Sole Distributor
- c. Type or kinds and brand of goods
- d. Marketing region
- e. Rights and obligations of respective parties
- f. Terms of agreement termination and settlement of dispute
- g. Period of agreement
- h. Full name and title the signatory of the Distributorship Agreement of respective parties

3. If the appointment of an agent, Distributor or Sole Distributor in Indonesia made by Principal Supplier (not Principal Manufacturer), it is necessary to have an Approval Letter or Letter of Authorization from the Principal Manufacturer stating that the Principal Supplier may appoint any agent, distributor or sole distributor for the said products in Indonesia.

The letter of appointment and/or Distributorship Agreement shall be signed by the competent person in the company for that purpose.

The letter of appointment of an agent, Distributor or Sole Distributor by Principal Manufacturer or Principal Supplier shall minimally be valid for 2 years and the Certificate of Agency, Distributorship or Sole Distributorship shall be valid for 3 years.

The valid period of the Certificate of Registration shall be adjusted to the period of appointment of an agent, Distributor or Sole Distributor, minimally for 2 years and the extension thereof shall be based on the agency, distributorship or sole distributorship agreement.

The termination between a Manufacturer or Supplier and an Agent, Distributor or Sole Distributor prior to the expiry of the Certificate of Registration can only be made upon the agreement of both parties in writing by due observance to the clean breaks.

The Agent, Distributor or Sole Distributor registration shall be conducted by the Director of Company Registration, Directorate General for Domestic Trade, Ministry of Trade of the Republic of Indonesia.

REGISTRATION OF A REPRESENTATIVES OFFICE

The requirements that should be fulfilled in the registration of Representatives Office:

- a. **Letter of Intent (2 original & 2 Certified True Copies)** from the principal manufacturer or principal supplier (in this case, Malaysian company) which is ratified by Notary Public, Ministry of Foreign Affairs Malaysia.
- b. **Letter of Appointment (2 original & 2 Certified True Copies)** from the principal manufacturer or principal supplier (in this case, Malaysian company) which is ratified by Notary Public, Ministry of Foreign Affairs Malaysia.
- c. **Letter of Statement (2 original & 2 Certified True Copies)** from the principal manufacturer or principal supplier (in this case, Malaysian company) which is ratified by Notary Public, Ministry of Foreign Affairs Malaysia.
- d. **Copy of Memorandum and Article of Association (MNA) (2 full sets)** of principal manufacturer or principal supplier (in this case, Malaysian company) which is ratified by Company Commission of Malaysia (CCM).
- e. **Curriculum Vitae (4 sets)** from the appointed party containing at least place and date of born, nationality, educational background, and working experience.
- f. **Recommendation Letter** from the Principal Manufacturer or Principal Supplier

Incomplete submission of the above requirements will not be accepted.

All the required documents must be submitted to:

**Commercial Attache
Embassy of the Republic of Indonesia
No. 233 Jalan Tun Razak 50400
Kuala Lumpur, Malaysia**

NOTE:

Trade Division of the Embassy of the Republic of Indonesia is not allowed to do any kind of transactions, sign any contracts, or sell any products.

LIMITED LIABILITY COMPANY OR PERUSAHAAN TERBATAS (PT)

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. Regardless of who is the owner of the Indonesian Limited Liability company, they must comply with Indonesian law and are considered an Indonesian company. The company can subsequently be changed or sold to the shareholders, foreigners or Indonesian.

To get license of Change of Capital and Change of Owner the applications should be submitted to BKPM. According to BKPM, there's no charge to arrange licences.

TAXATION

Another important matter is the Taxation. It is compulsory to report taxes on a monthly basis

Tax System – New Laws

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.

Withholding Taxes

The rates of withholding tax vary according to the nature of the income source. Rates for domestic payments extend 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. Tax rates Progressive rates of income tax for individuals rise up to a top rate of 35% applicable to annual taxable incomes in excess of IDR 200million (Approximately USD 20,000). The top rate of corporate income tax is 30% applicable to taxable incomes of more than IDR 100 million (USD 10,000).

Value Added Tax

VAT applies to the import and delivery of most goods and service. However, insurance and banking are not subject to VAT. VAT is collected at a standard rate of 10%. The export of goods is zero – rated. Taxpayers are required to file a return in the month following, showing details of all output and input VAT. The net output VAT is then payable by the 20th of the following month. An excess of input VAT may be carried forward. Refunds may be applied for in the case of chronic overpayments. Suppliers who do trading with so called 'VAT Collectors' will not collect VAT from their customers or clients. The VAT is then paid direct to the State Treasury. Such suppliers may be in a constant overpayment situation and may be forced to seek regular refunds. VAT has become a major source of revenue for the Government.

For further information, please visit www.depkeu.go.id

ACCOUNTING & REPORTING

The Indonesian Statement of Financial Accounting Standards is mostly based on the International Accounting Standards (IAS), which was recently changed to International Financial Reporting Standards (IFRS).

VISAS FOR FOREIGN DIRECTORS/EMPLOYEES

Applications for KITAS and KITAP, and other permits, should be submitted to:

Directorate General of Immigration
JL. HR Rasuna Said Kav. 6-7
Jakarta Selatan, Indonesia
Phone : (62-21) 522-030

For further information, please visit www.imigrasi.go.id

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TRADE FACILITATION

In accordance with its tasks, currently Indonesian customs (Directorate General of Customs and Excise) has carried out its customs reform programme. Four initiatives are contained in this programme, namely, trade facilitation, combating smuggling and under valuation, improvement of cooperation with stakeholders and improvement of integrity. Indonesian customs realizes that a conducive environment for legal trade and investment should be created. In facilitating trade, several initiatives were taken, such as:

- a. Simplification of customs clearance procedures;
- b. Implementation of priority channel;
- c. The use of automation and implementation of risk based management control have been put into practice

For that purpose, customs introduce several measures directed to eliminate high cost economy due to the complexities of the procedure and to create fair competition in trade simultaneously. The main strategic initiatives in the area of trade facilitation are the introduction of priority channel, the establishment of new release procedures, the improvement of new release systems of imported goods and the modernization of systems.

PRIORITY CHANNEL

This scheme of customs release procedure is for importers with high compliance and outstanding reputation. By receiving this facilities that are available in the priority channel are the opportunity to import goods and there is no need to check the documents physically anymore, deferred import duty payment, etc.

The main objective of this scheme is to promote efficiency of high compliance importers.

These importers are usually big trading companies or industries. Through priority channel, eligible importers will be able to save time and costs for customs clearance process. Furthermore, the implementation of the priority channel encourages the improvement of compliance levels.

NEW RELEASE PROCEDURES

Basically, the new release procedure, which is the adjustment of existing import clearance procedures, has been introduced to improve customs performance in the area of import clearance services and control. In the area of import clearance services, the new release procedure has been formulated to speed up the process as well as to reduce the significant intervention of officers. From customs control's point of view, the new release procedure has been formulated to speed the process as well as to reduce the significant intervention of officers. From customs control's point of view, the new release procedure has been created to prevent the existence of illegal/fictitious traders by implementing the risk based management control.

The main characteristics of the new release procedure are the use of risk parameter in determining the types of customs service and control, and provision of privilege for particular importers. The use of risk parameters such as importers profile, commodity profiles and other risk-based parameters including random checks as a basic instrument in determining types of customs service and control, allows customs to separate the high- and low-risks importance from the beginning of customs clearance process to direct types of service and control accordingly. High-risk importance will be treated and controlled through a red channel while low-risk importance through a green channel. Particular eligible companies will be directed through the priority channel provided with several clearance facilities (privilege) which allow the importers to save time and costs.

MODERNIZATION OF CUSTOMS AUTOMATION

Modernization of customs automation is highly required to support the implementation of new release procedures including other procedures in the enforcement area. Besides automation, there is also the reduction of personal contact between importers and officer(s) and to accelerate the speed of the process. Modernization of automation is required to eliminate unnecessary intervention of customs officer(s) during the clearance process. In the absence of such intervention, customs will be able to avoid problems of potential collusion, corruption and uncertainties. Together with other measures, modernization of customs automation aims at eliminating high cost economy due to the complexities of the customs clearance procedure. Such other measures are:

- a) Simplified customs duty payment systems respectively; and
- b) Improvement of quality of valuation database and quality of release system of imported goods.

To optimize customs performance in combating the existence of illegal/fictitious traders, other initiatives that will be elaborated in the area of enforcement have already been taken.

ENFORCEMENT MEASURES

To some extent, critics on inefficiency and ineffectiveness of customs in controlling imports and exports will always come up. Customs control systems create costs for the economy and fail to prevent the flow of illegal commodities to domestic market. To encounter that condition, customs, complemented with other initiatives in trade facilitation program, has introduced several comprehensive measures in the enforcement area such as importer registration; improvement of the role of the intelligence unit in controlling flow of imported and exported goods; anti-smuggling campaign; optimizing the use of hi-co scan X-ray systems; improvement of physical technique; spot checks; providing inspection space; simplification of verification procedures; etc.

IMPORTERS REGISTRATION

Importers registration is the most significant initiative to prevent the existence illegal/fictitious traders. Prior to introduction of customs reform, there was no reliable data concerning importers available in the customs database besides importers licenses issued by the Ministry of Industry and Trade. The lack of information concerning the importers derived from a previous customs policy which ignores the reliability of importer profile for the service.

To face this problem, customs has introduced an importer registration programme. Through this programme, customs collects data concerning the existence of a particular importer, management, nature of business and book-keeping. Furthermore, the use of data from the registration programme is for customs service and control.

Importers registration, therefore, is not only relevant to enforcement purposes but also to trade facilitation measures. Based on data collected from the registration programme, customs sets up types of services and control. Better quality customs services will be provided for importers with better performances, high degree of compliance and good reputation, while better quality customs control will target importers with bad performance, compliance and reputation.

STANDARD OPERATING PROCEDURE - IMPORTS

Some of you might be ever facing some problems for your shipments into Indonesia due to lack of information provided by your partner/agent in Indonesia.

The following are the custom regulations in place for all import into Indonesia, any deviation from these regulations would jeopardize the consignment into long delay in custom clearance and subject to HEAVY PENALTY, depend on the mistake occurred.

To avoid future problems, we would encourage you to read the information provided below and apply necessary operational process for all your future consignment into Indonesia.

1. Indonesia customs required house bill of lading (H/BL) and master bill of lading (M/BL) to facilitate clearance of cargoes/shipments at the seaport.
2. The details as stated in you H/BL and M/BL must match 100% with subject consignment can not have any discrepancy will be tolerated. The item to look out are as follows:
 - Shipping Mark
 - Quantity
 - Gross/Nett Weight
 - Measurement
 - Description in the goods
 - Consignee Name's

For point 1 & 2 above applied to all consignment arriving in Indonesia be they direct consolidation, FCL, LCL otherwise.

There for, if on one container consisting of five H/BL and one M/BL, so the shipping mark on each H/BL must also be shown on the M/BL, the total quantity/Gross or Nett weight/Measurement.

On each/BL can be combined when requesting issuing M/BL, but the total amount of quantity/gross or net weight/measurement must be match with the total quantity of H/BL.

Destination office must get the pre-alert or shipping information not more than 10 days after vessel sailing from origin port (EUROPE, USA, AUSTRALIA) and 2 days after vessel sailing from origin port (SINGAPORE, HONGKONG, PORTKLANG, BANGKOK). You are required

to fax all copies of Manifest, H/BL, and M/BL to Indonesia. Pre-alert in this format an absolute must for us (as your agent in Indonesia).

1. To avoid problems and expedite clearance at the seaport, we must receive copies of the document at least one week before the vessel arrived in Indonesian ports for traffic from EUROPE, USA and AUSTRALIA and at least 2 days before the vessel arrived in Indonesian ports for traffic from SOUTH EAST ASIA and FAR EAST.
2. Indonesian custom Authorities are explicitly clear in what they required and will impose unreasonable penalty for failures to comply.

The most important is not to put cargoes to others Indonesian port onto consolidation box to Jakarta as it will required special document to clear the goods which is will takes a long delay and wasted for unnecessary money to pay to the custom port authority.

For some specific cargoes such as Class cargoes, Overweight, Overlength and Oversize cargoes please check with each destination port first before accepting the booking as each port in Indonesia apply a different regulation for such shipment.

BUSINESS INFORMATION

INDONESIA NATIONAL SINGLE WINDOW

The government of Indonesia is making considerable progress in its efforts to improve and expedite the process of customs release and clearance with the launch of Phase Three Indonesia National Single Window (INSW) electronic customs processing system. The Single Window approach which is being implemented throughout ASEAN (Association of South East Asian Nations) will modernize the way trade is conducted within the region.

For Indonesian importers this new system endeavours some of the import related costs by minimizing the bureaucracy and simplifying the import process. INSW is part of a broader ASEAN trade facilitation initiative to strengthen economic integration. The system aims to enable:

1. A single window used for submission of data and information relating to import and export procedure
2. A single synchronized processing of the data and information
3. A single point of decision making through close collaboration among the other government agencies involved in customs release and clearance of cargos

Traditionally the customs release and clearance process has been a primary obstacle for Indonesian importers. Under the paper based system, goods may be typically up to more than 5 days before being cleared by the customs authorities due to the bureaucracy involved whereby each shipment requires individual approvals from multiple government agencies.

The Single Window concept links the government agencies so that the process can be electronically rather than to face with each government agencies. Paper-based systems for clearing goods generally require that documents be hand carried from office to office. Importers often find it necessary to hire brokers and other facilitators to take care of this for them, adding to their costs and further complicating the trade process.

With the NSW, all of that can be eliminated. All transactions can be handled electronically, with little if any direct contact between the traders and border agency personnel. This reduces the need for brokers and expeditors, lowering costs. Modern businesses are quickly moving to fully electronic purchasing systems that dramatically shorten the time that it takes for the formalities of business-to-business trade.

As a result the INSW allows cargos to move across national border (and eventually across ASEAN borders) in an expedited and simplified manner, thus benefiting importers with time and cost savings.

During the Phase Three launch, the system becomes mandatory across Indonesia meaning that all major ports and major government agencies are linked online and importers must transition from the paper based procedure to the electronic system.

The implementation of Phase Three of INSW is also significant as it bring Indonesia, Brunei Darussalam, Malaysia, Philippines, Singapore and Thailand plan to combine their national single window system. Other ASEAN countries – Cambodia, Laos, Myanmar, Vietnam will have until 2012.

IMPORT REGULATION

1. Regulation of the Ministry of Trade

In the framework of enhancing consumer protection and creating fair business competition the Ministry of Trade imposed a NEW regulation on the import of certain products. The certain products are electronic goods, clothing, children toys, footwear and food and beverages as listed by tariff classifications.

The regulations set forth three primary requirements:

- a. Register Importer Requirements/License
- b. Companies intending to import certain products must be registered as a Registered Importer from the Ministry of Trade. To obtain the registered importer license, it will involve other type supporting licenses.
- c. Limitation on Available Ports as Entry Points

The regulation limits the ports available in:

- Medan – Belawan
- Tanjung Priok – Jakarta
- Tanjung emas – Semarang
- Tanjung Perak – Surabaya
- Dumai - Riau
- Soekarno Hatta and all international airports in Indonesia

d. Surveyor Requirement

Prior to the importation of covered products by the Registered Importer and independent surveyor appointed by the Ministry of Trade must conduct an Import Technical Verification or Investigation at the port of loading before goods are shipped. A written Surveyor Report which documents the results of the technical verification or investigation must be submitted by the Registered Importer to the Customs authorities during Customs clearance at the port of import together with the Certificate of Appointment of the importer as a Registered importer of specific products.

The appointed Surveyor should meet the following requirements:

- Five years experience as a Surveyor
- Branches or representatives and/or affiliates abroad and a network to support the verification
- Track record in Import verification in the framework of implementing the policy of the Indonesian government

Pursuant to the Regulation, these new requirements are in effect from 01 January 2009 to 31 December 2010.

2. *Regulation of the Ministry of Health*

“Badan Pengawasan Obat dan Makanan” Merek Luar (ML) Certification

All imported processed food products must be registered with the National Agency for Drug & Food Control (**Badan Pengawasan Obat dan Makanan/BPOM**) before clearance through Customs. This regulation requires the importers to apply for an import permit and this import permit must be obtained before an exporter can get an ML or registration number.

Food product that has passed laboratory testing and gained the approval from the Food and Drug Supervisory Agency (BPOM), will have the inscription of BPOM RI on the packaging, followed by the code “MD”, which means the product was domestically produced, or “ML”, meaning the product was produced abroad. This code will be followed by a 12-digit licensing number.

Requirements for MD/ML Approval

Domestic Product:

- Business license from Ministry of Industry of the Republic of Indonesia or Coordinating Board of Investment.
- Certificate of trademark from Ministry of Law and Human Rights of the Republic of Indonesia for brand using ® or ™ sign.

Imported Products:

- Letter of appointment from the company of origin (show the original).
- Health Certificate or Certificate of Free Sale from the authorities of the country of origin (show the original).
- Food sample in the original packaging.

For further information, please visit the website of BPOM: www.pom.go.id