

# Indonesia Now

Indonesian Legal System



# Indonesian legal system

1. Nature of legal system
  - civil law
  - property
  - contracts
  - dispute resolution
2. Intellectual property
3. International trade
  - foreign investment
  - trade in goods
4. Corruption and bribery

# Nature of the legal system

civil law | property | contracts | dispute resolution



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# Nature of the legal system

- Civil law jurisdiction
  - laws found in civil and criminal codes
  - judges not bound by precedent
  - trust are generally not recognised
  - contracts are subject to the principal of good faith
  - disputes not adversarial
- Many levels of Government – Not always in harmony
- Land
  - cannot be owned by non-Indonesian citizens
  - 50 year right to occupy
  - 95 year lease
  - 50 year building rights

# Contracts

- Indonesian language requirement
- Memorandum of understanding – may be enforceable
- Good faith requirement – can be the basis for a civil claim
- Choice of law
- Dispute resolution

# Dispute resolution

- Difficult, slow and costly
- Cost of resolving dispute averages 140% of the amount of the claim
- Lack of precedent leads to inconsistency
- No preventative or injunctive relief to prevent a breach
- Foreign judgements cannot be enforced in Indonesia – choice of governing law important
- Arbitration
  - is increasingly popular
  - is enforceable
  - may be quicker and less costly
- Ultimately, rely on the relationship rather than a Court or Tribunal to resolve the dispute

# Intellectual Property



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# Intellectual property

- Signatory to international agreements on IP
- Patents, trademarks, copyright and designs recognised
- Registration
  - rights recognised through registration
  - trademarks must be registered in good faith
  - registration process can be slow
- Weakness in IP system
  - enforcement
  - lack of awareness



# International trade

Foreign Investment | Trade in goods



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# Foreign investment

- Direct foreign investment – limited liability company
- Foreign investment must be Government approved
- Representative office
  - cannot engage in sales
  - used for marketing, coordination
- Limits on foreign investment
  - negative list – alcohol, gambling
  - Caps on level of foreign investment – energy, communications, healthcare, retail, distribution
- Joint ventures most common form of entry into the market

# Trade in goods

- To import goods a general import licence is required
  - takes about 2 months to obtain
  - valid for 5 years
  - different licences for producers
- No foreign exchange restrictions
- FTA with ASEAN, China, Korea, India, Australia, NZ and Japan
- Australia Indonesia FTA
- Export duties may apply
- Some export restrictions
- Penalties for underpayment of duty - up to 1000% of the unpaid duty

# Corruption and bribery



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TRANSPARENCY INTERNATIONAL'S  
CORRUPTIONS PERCEPTIONS INDEX

**INDONESIA RANKED 114 OUT OF 175**

# Corruption and bribery

- Criminal Code Act 1995
  - Elements of offence
    - » what, where, to whom, by whom?
  - Penalties
    - » individual – 10 years imprisonment and/or maximum fine of \$1,700,000
    - » body corporate – the greater of \$17,000,000, 3 times value of benefit or 10% of annual turnover of business
  - Defences
    - » if written law in Indonesia
    - » facilitation payments – no clear guidance
- Corporations Act 2001 – additional offences
- Enforcement in Australia – criticism by OECD Working Group

# Other corruption and bribery laws

## Indonesian laws

- KPK (independent investigative commission) and special anti-corruption court
  - any gift to a public official must be approved by KPK – offence if undisclosed
- Elements
  - personal enrichment at expense of the State's finances or economy
- Penalties
  - life imprisonment or 4-20 years and a fine between IDR 200 million and 1 billion
- No facilitation payment defence

# Other corruption and bribery laws cont.

## UK and US legislation – far reaching implications

- Broad territorial reach
- UK Act extends from bribery of public officials to bribery of private businesses and individual citizens



# Managing risks of corruption and bribery

## Due diligence

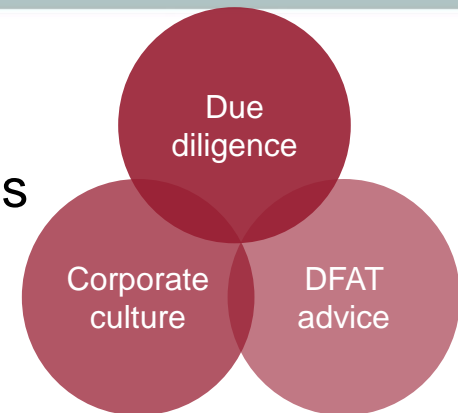
- of agents, companies investing in and tender process
- write obligations into contracts

## Corporate culture

- education of employees, contractors and agents (or partner company)
- strict record keeping (e.g. of any facilitation payments)
- ongoing training, reporting and monitoring

## DFAT advice

- naming and shaming tool, meetings with local officials
- advise to report competitors bribing (confidential)



# Questions



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