Doing Business in Indonesia 2025

General Legal Guide for Doing Business in Indonesia

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English Version

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1. Overview on Indonesia's Economic and Investment Climate

Indonesia, the world's fourth most populous country with 280 million population, is a dynamic and rapidly developing country in Southeast Asia. As the world's 10th largest economy in terms of purchasing power parity and a key-member of G-20, Indonesia has become a major player in the global trade and investment due its vast natural resource. As of the beginning of 2025, Indonesia has also become a full member of BRICS.

Indonesia has made enormous gains in poverty reduction with a notable poverty rate of 9.03% as of March 2024. However, Indonesia's economy was disrupted during COVID-19 pandemic in 2020, with a negative growth of 2.1% (5.0% YoY). This is the first contraction experienced by Indonesia since the Asian financial crisis of 1997-1998.

The Indonesian government has taken a strategic step to support the economic growth during COVID-19 by introducing Law No. 11 of 2020 on Job Creation – Omnibus Law ("**Omnibus Law**"). The law has intensified Indonesia's economic attractiveness and accelerated the economic recovery by lowering corporate taxes, reorganizing rigid employment laws, simplifying business licensing system, and reducing bureaucratic and regulatory barriers to investment. The law also provides a basis to promote many sectors, including healthcare services, technology, and telecommunication. In addition, the country's emerging e-commerce is unveiling more entrepreneurial dispositions, also building a basis to overcome challenges of Industry 4.0.

The primary objective of Omnibus Law is to incentivize foreign investors in Indonesia, thereby stimulate Indonesia's economic growth and improve social welfare. However, there is a lot of controversy surrounding the Omnibus Law. The law has been the subject of judicial review petitions to the Constitutional Court. Due to such reviews, the Constitutional Court has ordered the House of Representatives and government to revise Omnibus Law, following the stipulation of Law No. 6 of 2023 on Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation to become Law ("**Job Creation Law**"). This stipulation has revoked the 2020 version of Omnibus Law. After the enactment of the 2023 Job Creation Law, another judicial review was filed to the Constitutional Court, leading to the latest amendment to the manpower law cluster of Job Creation Law. This latest amendment provides several amendments beneficial to the Indonesian manpower, particularly the term of definite period of employment contract, and provisions on severance payment in case of employment termination.

In October 2024, Indonesia inaugurated the new President and Vice President (President Prabowo Subianto and Vice President Gibran Rakabuming Raka) following a general election in February 2024, which marked the end of President Joko Widodo's 10-year-administration. The new administration is expected to make many new economic policies and investment priorities. The main sectors prioritized in this administration would be, among others, renewable energy, natural resources (including the downstream mineral and mining commodities), public housing, financial services, and other labor-intensive industries. With the steady growth of 5% GDP and middle-class population, Indonesia remains an attractive hotspot in Southeast Asia for foreign investment. Given the current geopolitical situation, Indonesia maintains its "natural-active" approach and consistently considered as a non-block non-aligned country, that accommodates foreign investors regardless of their political alignments.

The economic opportunity in Indonesia also comes with the challenges. It is important that any investor coming to Indonesia understands the legal landscape and ongoing challenges in order to make an informed decision. We provide in this guide, the general legal overview of doing business in Indonesia for your reference.

2. Legal Overview on Doing Business in Indonesia

2.1 Types of Business Entity

There are many types of business entities recognized under the Indonesian Law. For this legal guide, we will address the most common entities used by foreign businesses to enter the Indonesian market; (i) Representative Offices and (ii) Limited Liability Companies.

A. Representative Office: Establishing a representative office could be a viable option for a foreign investor to have the local presence in Indonesia. Three general types of representative offices are Foreign Company Representative Office (*Kantor Perwakilan Perusahaan Asing* or "**KPPA**"), Foreign Trade Representative Office (*Kantor Perwakilan Perusahaan Perdagangan Asing* or "**KP3A**"), and Construction Service Provider Representative Office (*Badan Usaha Jasa Konstruksi Asing* or "**BUJKA**").

KPPA and KP3A are licensed offices set up in Indonesia by foreign companies. They are not construed as legal entities and have limited permitted activities, which include market exploration and liaison activities (**i.e.,** acting as the local contact to connect the overseas head office with the Indonesian parties). It is important to note that KPPA and KP3A are strictly restricted from undertaking trading activities and generating revenues in Indonesia. Moreover, KP3A could also be established by a foreign e-commerce platform if they have obtained the necessary e-commerce license (*Surat Izin Usaha Perwakilan Perusahaan Perdagangan Asing di Bidang PMSE* or **"SIUP3A PMSE"**)

A BUJKA is established for the specific purpose of entering into a joint operation agreement to engage in construction and construction consulting services with an Indonesian entity. Unlike KPPA and KP3A, BUJKA is allowed to carry out profit-making operations. Consequently, the regulatory requirements for establishing BUJKA are comparable to that of a licensed Indonesian construction service company, with some differences in the licensing process.

B. Limited Liability Companies: In terms of direct investment, Indonesian companies are categorized as follows:

i. **Foreign Capital Investment Company/ *Perusahaan Modal Asing* ("PMA Company"):** A company that has foreign shareholding.

ii. **Domestic capital investment company/ *Perusahaan Modal Dalam Negeri* ("PMDN Company"):** A company that only has domestic shareholding.

PMA and PMDN companies are registered to the Ministry of Law (*Kementerian Hukum* or "**MoL**") and the Online Single Submission ("**OSS**") system. The OSS system, currently managed by the Ministry of Investment and Downstream/Investment Coordinating Board (*Kementerian Investasi dan Hilirisasi/Badan Koordinasi Penanaman Modal* or "**BKPM**"), provides an integrated one-stop business licensing system, unifying the relevant licensing authorities under the central government.

In practice, a foreign company planning to carry out business activities that are open for foreign investment could establish a PMA Company, or acquire shares of an Indonesian company. In limited areas such as the upstream oil-and-gas and construction services, a foreign entity should be licensed to carry out business in Indonesia.

Minimum Required Shareholders: Please note that Law No. 40 of 2007 on Company Law, as lastly amended by Job Creation Law ("**Company Law**") requires any PMA or PMDN company to have, at least, two shareholders. However, Job Creation Law exempts micro-and-small enterprises from meeting the requirement and allows them to establish a limited liability company with only one shareholder. Please note that a micro or small enterprise can only be established as a PMDN. A PMA Company will be considered as a large-scale company, which must fulfill the minimum requirement of two shareholders.

2.2 Establishing Business Entity

A. General Procedure and Requirement for Establishing a Representative Office

General procedure: The following are steps to establish a representative office in Indonesia:

(i) Preparing the documents for the representative office's establishment (legalized by the Indonesian Embassy of the principal office);
(ii) Renting the office in Indonesia;
(iii) Appointing the Head of Representative Office;
(iv) Applying to the OSS system to obtain the Business Identification Number (*Nomor Induk Berusaha* or "**NIB**"), and relevant licenses;
(v) Applying the SIUP3A PMSE to the OSS system for the e-commerce platform (*if necessary*);
(vi) Applying for the taxpayer identification number (*Nomor Pokok Wajib Pajak* or "**NPWP**") to the relevant tax office;
(vii) Opening an Indonesian bank account for the operational purposes; and
(viii) Submitting the licensing application to the Minister of Public Works (*Kementerian Pekerjaan Umum* or "**MoPW**") for a BUJKA representative office.

Capital Requirement: The prevailing law does not stipulate any capital investment requirement for the establishment of KPPA or KP3A, while MoPW specifies the annual sales and capital requirement for a BUJKA establishment.

Approximate Time Frame: The establishment of a representative office takes approximately one to two months from the document preparation until it is ready for operation.

B. General Procedure and Requirement for Establishing a PMA Company

General Procedure: A foreign investor needs to carry out the following steps:

(i) Reserving the company name to MoL;
(ii) Analyzing proposed business activities of the PMA Company;
(iii) Preparing drafts of the deed of establishment and articles of association, and the deed execution of the PMA Company before a public notary;
(iv) Obtaining MoL's acknowledgement through the electronic filing system;
(v) Applying to the OSS system to obtain NIB;
(vi) Applying for NPWP to the relevant tax office;

(vii) Opening an Indonesian bank account for the company operation and share capital deposit;
(viii) Obtaining the Taxable Entrepreneur Confirmation (*Surat Pengukuhan Pengusaha Kena Pajak* or "**SPPKP**"); and
(ix) Obtaining the business licenses and fulfilling the business requirement, as applicable.

Minimum Capital Requirement: Pursuant to BKPM Regulation No. 4 of 2021 on Guideline and Procedure for Risk-Based Business Licensing and Capital Investment Facilities ("**BKPM Reg. 4/2021**"), a PMA Company must have a minimum paid-up capital of, at least, IDR 10 billion (equivalent to USD 605,199). Moreover, it must fulfill the investment commitment of more than IDR 10 billion (excluding the land and building value) per registered Indonesia Business Field Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* or KBLI).

Approximate Time Frame: The establishment of a PMA Company takes approximately two to three months from the document preparation until it is ready for operation. However, the time frame may vary depending on the business, subject to the document processing as required by the relevant authorities.

2.3 Government Authorities

Generally, BKPM is responsible for the processing and issuance of the approvals and/ or licenses for all foreign investments, except those in the banking and financial sector. Under the new regime, the business licenses are issued through the integrated OSS system.

2.4 Business Licensing Changes Under the Job Creation Law

With the Job Creation Law "perfecting" the previous Omnibus Law, it has introduced significant changes to Indonesia's investment and licensing regime. Notably, the law has expanded its scope by incorporating eight additional regulations, increasing the total from 75 to 83 laws and regulations under Job Creation Law (*see the complete list of the amended laws here*).

A. General Overview of Risk-Based Business Licensing

Job Creation Law has provided substantial changes to reorganize and simplify the licensing requirement and procedure. The law has even removed the licensing prerequisites for certain businesses, further stipulated under Government Regulation No. 5 of 2021 on Implementation of Risk-Based Business Licensing ("**GR 5/2021**").

Unlike the previous regime, the requisite licenses for each business are based on the risks and potential risks posed by the activities. Business activities are now categorized into three risk categories, (i) Low Risk, (ii) Medium Risk (**i.e.,** Medium-Low and Medium-High Risk), and (iii) High Risk.

Business licensing requirements based on the risk classification are detailed as follows:

Risk Level	Business Licensing Document
Low Risk	▪ Businesses are required to obtain NIB to commence their operations and commercial activities. ▪ NIB is also used as, among others: (i) the Indonesian National Standards (*Standar Nasional Indonesia* or "**SNI**"); and/or (ii) the halal guarantee statements (for low-risk, small-and medium enterprises); the Import Identification Number (*Angka Pengenal Impor*), the Customs Access Right (*Hak Akses Kepabeanan*), and

Risk Level	Business Licensing Document
	the Environmental Management and Monitoring Capability Statement Letter (*Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup*).
Medium-Low Risk	▪ Businesses are required to obtain (i) NIB; and (ii) a Standard Certificate (*Sertifikat Standar*) prior to commencing their business operation. ▪ The Standard Certificate is an independent statement of compliance with the standard requirements submitted through the OSS system (Article 13 (1) and (2) of GR 5/2021).
Medium-High Risk	▪ Businesses are required to obtain (i) NIB; and (ii) Unverified Certificate of Standards to commence their preparation-stage operations (e.g., procurement of the property, recruitment of employees, fulfillment of pre-business requirements, etc.). ▪ The company can begin their commercial operation once the central or relevant regional government has issued a verified standard certificate, based on the compliance with the standards of business activity implementation (Article 14 (1) and (2) of GR 5/2021).
High-Risk	▪ Businesses are required to obtain (i) NIB, (ii) Business License, and, if necessary, (iii) Standard Certificate. ▪ The license is issued once the business has fulfilled certain conditions and verifications set out by the central or regional government, which may include an environmental impact analysis.

Sectors to Implement Risk-Based Licensing: The following are 16 business sectors that implement risk-based business licensing:

i. Maritime affairs and Fishery;
ii. Agriculture;
iii. Environment and Forestry;
iv. Energy and Mineral Resources;
v. Nuclear Power;
vi. Industry;
vii. Trade;
viii. Public Works and Housing;
ix. Transportation;
x. Health, Drugs, and Foods;
xi. Education and Culture;
xii. Tourism;
xiii. Religious affairs business;
xiv. Postal, Telecommunication, Broadcasting, and Electronic System businesses and transactions;
xv. Defense and Security; and
xvi. Manpower.

Impacts on the Existing Businesses: Any existing business already obtaining an effective business license **will not be affected** by the stipulation. However, businesses **not** yet fulfilling their commitments and having non-effective licenses will have to adjust their compliance, as their license applications will now be processed in accordance with GR 5/2021.

B. Positive Investment List

The Indonesian government has issued Presidential Regulation ("**PR**") No. 10 of 2021 on the Investment Business Field amended by PR No. 49 of 2021 ("**PR 10/2021**" or "**Positive List**") as the implementing regulation of Omnibus Law.

PR 10/2021 has replaced and revoked PR No. 44 of 2016 on List of Closed Business Sector and Open Business Sector with Requirements in Capital Investment Sector, known as the Negative Investment List. The Positive List features a significant change by opening numerous business sectors previously closed or restricted for foreign investment.

Under the Positive List, all business sectors are now open for investment except certain businesses that are completely closed to investments or specifically reserved for the central government with no third-party cooperation allowed. PR 10/2021 classifies business activities into the following categories:

i. **Closed business sectors:** This category, which consists of business activities that are closed for investment includes, cultivation of narcotics, any form of gambling and/or casino business, fishing of CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) species, chemical weapon manufacturing, and coral extraction business.

   Additionally, public service or strategic defense-and-security businesses can be carried out only by the central government and is closed to any cooperation with either domestic or foreign parties.

ii. **Investment priority sectors listed in Appendix I of PR 10/2021:** A total of 246 prioritized business activities are listed under the investment priority sector. As confirmed by the relevant government authorities, businesses sectors listed under this category are open for 100% foreign direct investment.

   Each business in the list can enjoy fiscal and non-fiscal incentives, including tax allowances/holidays; import-duty exemption; ease of business licensing, immigration, and employment matters; as available under the applicable laws.

iii. **Businesses reserved for, or, requiring partnership with Cooperatives and Micro, Small, Medium Enterprise ("CMSME"):** A total of 106 business activities in this category are listed in Appendix II of PR 10/2021. All businesses reserved for CMSMEs are restricted from foreign ownership. Meanwhile, a PMA Company can conduct a partnership with a CMSME on businesses the government intends to include in the global value chain.

iv. **Businesses conditionally open to investment:** In general, businesses in this list are those (i) entirely reserved for domestic investors; (ii) restricted from foreign capital ownership; (iii) requiring special licensing; or (iv) closely monitored and stringently regulated, subject to other regulations in the management and monitoring of alcoholic beverages.

Notwithstanding the ease of doing business introduced by Job Creation Law, prospective investors are strongly suggested to obtain professional advice on how the business field of a particular proposed investment is categorized.

3. General Taxation

Tax in Indonesia is generally regulated under the following laws and regulations:

i. Law No. 6 of 1983 on General Provisions and Guidelines on Tax, as amended several times, most recently by Law No. 7 of 2021 on Harmonization of Taxation Regulation ("**Law No. 7/2021**") ("**KUP Law**");
ii. Law No. 7 of 1983 regarding Income Tax, as amended several times, most recently by Job Creation Law ("**Income Tax Law**");
iii. Law No. 8 of 1983 on Value Added Tax ("**VAT**") for Services and Goods, and Sales Tax for Luxury Goods, as amended several times, lastly by Job Creation Law ("**VAT Law**");
iv. Law No. 12 of 1994 on Land and Building Tax Law, as revoked by Law No. 1 of 2022 on Financial Relationship Between the Central Government and the Regional Government;
v. Law No. 28 of 2009 on Regional Tax and Retribution Law; and
vi. Law No. 7/2021, as amended by Job Creation Law.

3.1 Tax Authorities
Most of Indonesian taxes are centrally administered by the Directorate General of Taxes ("**DGT**") under the Minister of Finance ("**MoF**"), except the regional taxes that are administered and collected by the regional governments.

DGT formulates the technical guidelines and procedures for the implementation of the Indonesian fiscal policy. In this regard, DGT has various units that administer taxpayer obligations (**i.e.,** monitoring tax compliance, collecting tax, counselling, and conducting tax audits). An account representative from the tax office will be assigned to serve each taxpayer.

3.2 Business Taxation
The principal taxes applicable to Indonesian Permanent Establishment (PE) of foreign companies doing business in Indonesia consist of CIT, branch profit tax, Withholding Tax (**i.e.,** PPh 21, PPh 22, PPh 23, PPh 26, and the Final PPh ("**Withholding Tax**")), Value Added Tax ("**VAT**") and Luxury-Goods Sales Tax ("**LGST**"), and various other indirect levies including Land and Building Tax, the regional taxes, and duty stamp.

It is important to note that any foreign company intending to invest in Indonesia should obtain detailed tax advice from accredited Indonesian tax consultants.

3.3 Taxes on Individual
Taxes applicable for individual taxpayers consist of, among others, Withholding Tax, the land-and-building tax (*Pajak Bumi dan Bangunan* or "**PBB**"), Land and Building Acquisition Duty (*Bea Perolehan Hak atas Tanah dan Bangunan* or "**BPHTB**"), VAT, LGST, and duty stamp.

3.4 Amendment of Tax Provisions under Job Creation Law
Job Creation Law amends several tax-related provisions including Income Tax Law, KUP Law, and VAT Law. Below are some takeaways on tax reforms under Job Creation Law:

A. Income Tax Law
- Exemption of Income and Withholding Taxes on dividends and PE's net-profit after-tax if it is re-invested in Indonesia within a certain period; and
- An Indonesian citizen residing abroad for more than 183 days may be treated as a foreign taxpayer. A foreign individual who is an Indonesian tax resident may be taxed only on the income sourced from Indonesia (changing from a worldwide to territorial income basis).

B. VAT Law

- Job Creation Law excludes the delivery of taxable goods under consignment from the definition of taxable goods delivery;
- The delivery of taxable goods as equity contribution for paid up capital in the new shares of a company shall not be regarded as a taxable delivery, if both the transferor and transferee are registered for VAT; and
- Subject to certain conditions, all business-related inputs of VAT incurred prior to the production stage can be compensated to the next period and claimed for a refund at the end of the year.

C. KUP Law

- Sanctions for tax underpayment are revised from a general fixed rate of 2% per month to a fluctuating rate linked to MoF's predetermined monthly interest rate. The same also applies to interest compensation for tax overpayment. In addition, the penalty for the incorrect or late issuance of VAT invoice is reduced from 2% to 1% of the VAT imposition base; and
- Statute of limitation for the issuance of a tax collection letter is now valid for five years.

3.5 Latest Update on Indonesia's Taxation

As per February 2025, Indonesia has implemented a new taxation provision concerning a general VAT rate increase through the issuance of MoF Regulation No. 131 of 2024 ("**MoF Reg. 131/2024**") as mandated by Law No. 7/2021.

This regulation enforces and implements the new 12% VAT rate that is only applicable to LGST, such as:

i. Non-commercial aircrafts (not for state or commercial purpose);
ii. Helicopters (not for state or commercial purpose);
iii. Types of aircrafts other than helicopters;
iv. 3000cc or more vehicles, including hybrid vehicles;
v. 500 cc or more motorcycles;
vi. Golf Buggy;
vii. Special vehicles including caravans;
viii. Luxurious residential housing, including apartments, condominiums, or townhouses, each with a sale-value above IDR 30 billion;
ix. Hot air balloon;
x. Firearms (artillery, revolvers, pistols), except those used for state purpose, not including air riffle bullets; and
xi. Luxurious yachts, excursion vessels, and other similar types of water transportation except those used for state or commercial purpose.

Whereas for non-luxury taxable goods, the VAT remains at 11% rate despite the mandate increase per Law No. 7/2021. This is because MoF Reg. 131/2024 stipulates new calculation method that enables the VAT rate to be maintained at 11%. For reference, the calculation method for VAT non-luxury taxable goods must be based on 11/12 of the selling price.

4. General Guidance on Corporate Compliance under Indonesia's Company Law

4.1 Corporate Governance

Law No. 40 of 2007 on Company Law as amended by Job Creation Law ("**Company Law**") requires PMA and PMDN companies to be governed by three bodies, which are Shareholders, Board of Directors ("**BoD**"), and Board of Commissioners ("**BoC**").

i. **Shareholders:** Under the Company Law, a company must have, at least, two shareholders (individuals or entities). Generally, a shareholder has the rights to: (i) attend and cast a vote in the general meeting of shareholders ("**GMS**"); (ii) receive dividend payments and distribution of remaining assets after liquidation; (iii) subscribe to newly issued shares in proportion to his or her shareholding for the equivalent class of shares.

ii. **BoD:** A company must have, at least, one director as member of the BoD, who will be responsible for the daily management of the company and submit an annual report to a General Meeting of Shareholders ("**GMS**") within six months of the closing of the company's books.

In addition, BoD is required to establish and maintain a special register of shareholders (*Daftar Khusus Pemegang Saham*) that contains information regarding the shares in the company, and in other companies owned by members of the BoD, BoC, and their families, and the dates the shares were obtained.

iii. **BoC:** The BoC is responsible for the supervision of the management of the company and provides necessary advice to the BoD with respect to the policies and effectiveness of the company management.

Appointment of BoD and BoC: The BoD and BoC are appointed by the shareholders through GMS for a specified period and may be re-appointed for subsequent terms. Any appointment, dismissal, or alteration of BoD and BoC must be notified to the Ministry of Law and Human Rights.

Foreign Directors and Commissioners of PMA Company: All directors, except the one (and other personnel) in charge of human resources, of a PMA Company may be foreigners. Meanwhile, the BoC of PMA Company can be entirely occupied by foreigners.

4.2 Prohibition on Nominee Arrangements

Law No. 25 of 2007 on Investment as amended by Job Creation Law ("**Investment Law**"), explicitly forbids nominee arrangements, a practice where a person or company holds shares for the benefit of another person, in PMA and PMDN companies. Any such arrangement will be null and void by the operation of law.

4.3 General Reporting Obligations

A. Investment Activity Report to BKPM

Under BKPM Regulation No. 5 of 2021 on Guidelines and Procedures of Supervision of Risk-Based Licensing, all business actors are required to submit the investment activity report (*Laporan Kegiatan Penanaman Modal* or "**LKPM**")**,** except those (i) with investment value of IDR 50 million or less; or (ii) engaged in upstream oil-and-gas, banking, non-bank financial services, or insurance activities.

The LKPM reports should be submitted to BKPM through the OSS system within the following reporting periods:

i. A BUJKA must submit an annual LKPM report every 10 January of the following year;

ii. A company with an investment value of just over IDR 50 million up to IDR500 million, also KPPA or KP3A company must submit the report twice a year, on 10 July and 10 January of the following year; and
iii. A company with an investment value of more than IDR 500 million must submit the report quarterly on 10 April, 10 July, 10 October, and 10 January of the following year.

B. Company's Mandatory Manpower Report to the Minister of Manpower ("MoM")

Law No. 7 of 1981 on Mandatory Employment Report of the Company requires all companies to submit a Manpower Report (*Wajib Lapor Ketenagakerjaan Perusahaan* or "**WLKP**") to MoM. This report shall be made on an annual basis, every December of the ongoing year. Under the OSS system, the issuance of a company's NIB is regarded as the acceptance of the company's first report.

4.4 Corporate Social Responsibility

Under the Company Law and related regulations, companies on natural resources businesses are required to have an annual Corporate Social Responsibility ("**CSR**") program. The report on the CSR program must be incorporated in the company's annual report and disclosed to the shareholders.

4.5 Currency

Pursuant to Law No. 7 of 2011 on Currency, the use of Rupiah is mandatory in any payment transaction, settlement of other monetary obligations, and other financial transactions within the territory of the Republic of Indonesia.

However, certain transactions are exempted from the requirement, including those (i) for implementing the state budget; (ii) in the form of grants received from or given to (state-related institutions) overseas; (iii) in international trade transactions; (iv) in bank deposits denominated in foreign currencies; and (v) in international financing transactions.

4.6 Language

Law No. 24 of 2009 on National Flag and Language, State Symbols, and National Anthem ("**Law No. 24/2009**"), and its implementing regulation mandates the use of Indonesian language for, among others, memoranda of understanding or agreements involving government agencies of the Republic of Indonesia, Indonesian private entities, or Indonesian individuals.

For a commercial contract where a foreign party is a counterpart, the agreement may be prepared in dual languages (Bahasa Indonesia and the language of the foreign party or English).

On 29 December 2023, the Supreme Court of the Republic of Indonesia has issued its Circular Letter No. 3 of 2023 ("**Supreme Court Letter 3/2023**"). Under this Supreme Court Letter 3/2023, the absence of Bahasa Indonesia in a private contract does not constitute grounds for contract nullification, provided that its implementation is not conducted in **bad faith**. This provision applies exclusively to contracts between foreign parties and Indonesian private entities and/or individuals.

Regardless of such exemption, this Supreme Court Letter 3/2023 only serves as guidelines for the court, whereas the importance of dual languages as mandated by Law No. 24/2009 remains important. Contracting parties may agree which language will govern in case of a

conflict, except in cases of mandatory utilization of Bahasa Indonesia as the governing language, such as in a deed granting a fiduciary security interest.

5. Employment

The Indonesia's employment sector is governed under Law No. 13 of 2003 on Manpower, lastly amended by Job Creation Law **("Manpower Law"),** and its implementing regulations. With the issuance of the Job Creation Law, provisions that were previously amended through the Omnibus Law may be considered superseded by the provisions regulated under the Job Creation Law.

The Manpower Law applies to both Indonesian and foreign manpower/ *Tenaga Kerja Asing* (**"TKA"**) working in Indonesia.

5.1 Employment Contract

In general, the Manpower Law acknowledges two types of employment based on its underlying agreement, which are (i) indefinite employment agreement or *Perjanjian Kerja Waktu Tidak Tertentu* **("PKWTT")**; and (ii) fixed-term employment agreement or *Perjanjian Kerja Waktu Tertentu* **("PKWT")**.

As an additional note, the Manpower Law requires that, the employment of a TKA must be made with PKWT arrangement, it is not possible for a TKA to be employed under PKWTT arrangement.

A. Contract Period

PKWT may be made based on a specific time or the completion of a certain job or work that is temporary in nature. It cannot be used for permanent jobs. It is important to note that the Job Creation Law has removed the previous restriction on the PKWT period of not exceeding 2 (two) years that could be extended once for a maximum period of one year, or renewed once for a maximum period of two years. The new amended Manpower Law through the Job Creation Law authorizes the employer and employee to agree on the employment period. Meanwhile, it is clear that PKWTT agreements should generally be made for an indefinite employment period.

B. Form of Employment Agreement

Employment agreements may be made verbally or in writing. A verbal employment agreement must be supported by an appointment letter to the employee, which includes, at least, the name and address of the employee, date of employment, type of employment, and salary.
Furthermore, the Manpower Law stipulates that every written employment agreement must include, at least:

i. the name, address, and line of business of the company;
ii. the name, sex, age, and address of the employee;
iii. a description of the job and its responsibilities;
iv. the place where the job will be carried out;
v. the amount of salary and how it shall be paid;
vi. job requirements stating the rights and obligations of both the employer and employee;
vii. the effective dates and period of the work agreement;
viii. the place and date where the work agreement is made; and
ix. the signatures of both parties involved in the work agreement.

5.2 Outsourcing

The Job Creation Law has heavily amended the provisions on outsourcing addressed under the Manpower Law. Under the previous regime, outsourcing can only be carried out for non-primary/core jobs. Further to the new amendments introduced and implemented through the Job Creation Law, there is no limitations on the types of outsourced work (i.e., the types of jobs permitted to be undertaken) under the Job Creation Law.

In addition, the Job Creation Law also introduces a new obligation on the outsourcing company, which must employ its employees under a fixed-term or PKWTT arrangement that includes a provision on the transfer of undertaking for employment protection (TUPE).

The key takeaway from these new amendments is to better guarantee the protection of workers' rights, ensuring that the outsourced employees' interests are regarded as a priority.

5.3 Employee's Wages

An employee's wage consists of the following components: (i) basic wage; (ii) fixed allowances; and (iii) non-fixed allowances. If the components of the wage received contain only basic wage and fixed allowances, the amount of basic wage shall be, at least, 75% of the total amount of basic wage plus fixed allowances.

While the Manpower Law does not stipulate nor mandate any provision for a national minimum wage. However, each province has a set guideline for their minimum wages. A minimum wage must be based on the extent that such wages will meet the costs of all basic needs of a decent living for the average individual living in such province. As such, it is important to note that every employer is prohibited from compensating wages less than the minimum wage specified for each province, regency, or region. However, this requirement is exempted for Micro and Small businesses.

5.4 Pension and Social Insurance

All employers are obligated to register their employees into the Social Security Program, i.e., (i) the healthcare social security administered by BPJS Healthcare; and (ii) the employment social security administered by BPJS Employment. Foreign employees who work in Indonesia for less than six months and Indonesian citizens who live abroad for, at least, six consecutive months are exempted from the requirement to be registered in these social security programs.

It is noteworthy that the Job Creation Law provides a new social security program, namely Job Loss Security/ *Jaminan Kehilangan Pekerjaan* administered by BPJS Employment and the central government. This security is given to employees whose contracts have been terminated by the company. The benefits of job loss security include cash, and access to job market information and job trainings, with a maximum claimed amount worth six months of the relevant employee's wage.

5.5 Termination of Employment

The Manpower Law stipulates that an employment agreement shall be terminated if one of the following events occurs:

i. death of the employee;
ii. expiration of the employment agreement;
iii. completion of a certain job;
iv. issuance of a legal and binding court decision and/or decision of the institution for the settlement of industrial relations dispute; or

v. a certain condition as determined under the employment agreement, company regulation/ *Peraturan Perusahaan* **("PP")**, or Collective Labor Agreement/ *Perjanjian Kerja Bersama* **("PKB")**.

If a PKWT agreement is terminated for reasons other than those listed above, the party that ends the employment contract must pay compensation to the other, which amount is equal to the wages the employee is entitled to receive would they have completed the entire term of their work, which is until the expiration of the PKWT agreement.

It is important to note that the employers can now refer to a specific regulation that permits the employer to include certain conditions other than those listed under the Manpower Law, which may result in the termination of employees. Such reasons can be accepted as long as they do not violate the Manpower Law. These provisions are also further listed and detailed under Government Regulation (**"GR"**) No. 35 of 2021 on Fixed Term Employment Agreement, Outsourcing, Working Hours and Rest Hours, and Termination of Employment (**"GR 35/2021"**).

A. Basis of Employment Termination

As mentioned in the preceding section, pursuant to Article 154A of Manpower Law, employment terminations are due to one or more of the following reasons:

i. the company carries out a corporate action (**i.e**. merger, acquisition, consolidation or spin-off) and the employee does not want to continue the employment;
ii. the company is in a efficiency measures due to financial losses either followed by the closure or non-closure of business;
iii. continual losses for two consecutive years;
iv. force majeure;
v. suspensions of debt payment obligations;
vi. bankruptcy;
vii. the employee's request for termination due to the employer's action;
viii. an order is issued by the institution for the settlement of industrial relations;
ix. the employee's resignation;
x. the employee's absence for five days with two summons;
xi. the employee violates the employment agreement, PP, or PKB;
xii. the employee is detained for six months or more for committing a crime;
xiii. the employee's prolonged illness;
xiv. the employee's retirement; and
xv. death of the employee

Notwithstanding the above permissible causes, employers must put all efforts to prevent the termination. If they fail, the termination of employment must be negotiated between the employer and the affected employee, or with the labor union, if the affected employee is a member. Should the negotiation fail, the employer may only terminate the employment after receiving a decision from the Industrial Relations Dispute Settlement Court.

B. Severance payment

If the employer terminates the PKWTT agreement, the employer is obliged to pay the severance pay, service pay, and compensation payments (as applicable) to the employee. The following are the calculation of an employee's severance package.

Severance Pay		Service Pay		Compensation Pay
Service Period	**Payment/ monthly salary**	**Service Period**	**Payment/ monthly salary**	The components of compensation pay include: ▪ annual leave that has not been taken; ▪ travel expenses to the employee's home town; and ▪ other compensations as determined in the employment agreement, PP, or PKB
<1 year	1	3-6 years	2	
1-2 years	2	6-9 years	3	
2-3 years	3	9-12 years	4	
3-4 years	4	12-15 years	5	
4-5 years	5	15-18 years	6	
5-6 years	6	18-21 years	7	
6-7 years	7	21-24 years	8	
7-8 years	8	>24 years	10	
> 8 years	9			

5.6 Industrial Management Relations

The Manpower Law requires that, any company that has, at least, 10 employees, needs to establish a PP (Company Regulation) ratified by the relevant district's Manpower Office. In establishing the PP, the employer shall consider the employee or labor union's recommendation in a democratic manner. The PP shall be valid for a maximum of two years upon its ratification.

However, note that an employer is not required to establish a PP if the employer already has a PKB (Collective Labor Agreement). In this regard, the PKB must be established based on the negotiation with, and consent of the labor union.

5.7 Utilization of Foreign Manpower

These are the required paperwork for an employer planning to hire a foreign worker, pursuant to the Manpower Law and Government Regulation No. 34 of 2021 on Foreign Manpower Utilization:

i. the Foreign Workers Utilization Plan/ *Rencana Penggunaan Tenaga Kerja Asing* (**"RPTKA"**) ratified by the central government through the OSS System, valid as a work permit; and
ii. notification to the Ministry of Manpower, valid as the document to process the issuance of the Limited Stay Visa and Permit.

Notwithstanding the above, Manpower Law exempts these parties from RPTKA obligation: (i) directors or commissioners with certain share ownerships; (ii) diplomatic and consular officers at representative offices of foreign state missions, and (iii) foreign manpower required for a production process halted due to an emergency, vocational programs, technology-based start-ups, business meetings, or research for a certain time.

It is important to note that foreign employees are prohibited from occupying positions related to personnel management, including personnel director, industrial relation manager, human resources manager, and other similar positions.

5.8 Indonesia Manpower Law Update – The Constitutional Court Rules to Amend the Manpower Law (Constitutional Court Decision No. 168/PUU-XXI/2023)

On October 2024, the Constitutional Court of the Republic of Indonesia (*Mahkamah Konstitusi Republik Indonesia* or "**MK**") introduces significant amendment to Manpower Law as amended

by Job Creation. These amendments were promulgated through MK Decision No. 168/PUU-XXI/2023 (**"MK Decision 168/2023"**), granting a petition to revise several provisions on labor rights.

The changes introduced by MK Decision 168/2023 provide more certainty and protection for the employee. For instance, PKWTT is not limited to a maximum of five years, with no extensions allowed. Moreover, this MK Decision 168/2023 also mandated that a for a PKWT to use Bahasa Indonesia and Latin alphabet to ensure clarity and validity.

Regarding employee entitlements, a work schedule is considered valid and constitutional only if employees receive two rest days per week and work a five-day week. Furthermore, in the event of a company's bankruptcy, employees are prioritized over all creditors, including preferred creditors, except secured creditors.

In addition, MK Decision 168/2023 requires employers to consider an employee's rank, position, length of service, and competence when determining wages and salary scales. Furthermore, the decision reinforces the importance of dispute resolution and termination procedures. During a dispute, both employees and employers must continue fulfilling their respective rights and obligations. Severance payments may now exceed the minimum stipulated amount, and employee termination can only proceed once a final and legally binding ruling (*inkracht*) has been issued by the appropriate employment dispute resolution institution (i.e., Tripartite or the Industrial Relations Court).

For ease of reference, please see the below remarks outlining the change as per MK Decision 168/2023.

Amendment	Remarks
Definite Period Employment Agreement (PKWT)	Introduces limit of PKWT period a maximum of 5 (five) years, which previously is silent and can be extended on a contractual basis.
PKWT Governing Language	Emphasize the obligation to use Bahasa Indonesia and Latin alphabet in the contract to ensure understandability and validity.
Rest Day	Providing employee's entitlement for 1 (one) rest day and 6 (six) working day as unconstitutional and only legally recognize 2 (two) rest day and 5 (five) working day.
Wage and Scale Component Determination	Reinstating that employer must consider employee factor such as rank, position, length of service, education and competence in addition to company's capability and productivity when determining employees wage structure and scale. The former component was previously removed by job creation, and thus any other interpretation besides this change shall be deemed unconstitutional.

Amendment	Remarks
Employee's Position of Company Bankruptcy	MK 168/2023 dictates that in the event of company declares bankruptcy, the company must initially prioritize employees' entitlement over other creditors (**i.e.**, preferred creditors such as outstanding tax obligations, court fees, receiver fees), except secured creditors.
Employee Termination Mechanism	Determining that employee termination can only occur after the final and legally binding decision from the appropriate employment dispute settlement institutions (i.e., tripartite or industrial relation court).
Severance Payment	Granting the possibility of receiving higher severance payment more than the stipulated requirement in the Manpower Law. This grantment by the MK Decision 168/2023 was made by incorporating sentence "at least" in the Manpower Law provision.
Fulfilment of Employee and Employer's Obligation during Dispute Settlement	As of now, employees and employers must remain conduct its obligation upon or during their settlement of dispute until the dispute resolution have issued a valid and binding ruling (*inkracht*). This change aims to prevent premature cessation and protects the relevant party's rights and responsibilities.

6. Dispute Resolution

In an international investment, the choice of dispute resolution forum and governing law is important to ensure the certainty, stability, and enforceability of contractual rights and obligations.

6.1 Choice of law

Indonesian Civil Law allows the parties to decide the governing law of their agreements. The Indonesian courts shall respect such decision given the parties choose a foreign governing law. If an agreement involving Indonesian parties does not stipulate a choice of law, Indonesian law will automatically apply in proceedings in Indonesian courts.

6.2 Language requirements

It is essential to conduct a risk assessment when considering the choice of language in agreements with Indonesian parties. Factors to consider in the risk assessment include the nature of the agreement, governing law, dispute resolution mechanism, identity of the Indonesian counterparty, and whether the contract would likely require any performance or enforcement in Indonesia. Typically, where an agreement is perceived to have a higher degree of risks, parties would agree for a dual-language execution. The foreign language version (usually English) will prevail to the extent of any inconsistency between the two versions.

In practice, there are two ways of signing a dual-language agreement:

i. **Dual-Language Execution:** An agreement may be drafted and executed in both English and Bahasa Indonesia. But in practice, it is often difficult to negotiate and finalize both versions simultaneously, particularly when facing tight timelines.

ii. **Translation Following Signing:** Alternatively, the agreement may be drafted and executed in English, but include a provision requiring the parties to provide the Indonesian translation within a specified time (**e.g.**, 30 to 90 days after the English version is executed), or, as and when such translation is requested by a party or is required for any purpose.

6.3 Civil Court Proceedings

If the parties agree to choose Indonesian court as its dispute resolution forum and in the event of a dispute, one of the parties must file a civil claim to the relevant district court to begin the dispute settlement proceedings. Under the Indonesian law, the disputing parties must first try to settle the dispute through mediation, prior to entering the court proceedings. In practice, such mediation will be mandated by the relevant district court, which will also provide a mediator to be present and hear both parties during their discussion. If the mediation fails, the judge will set a date for the hearing, and the litigation proceedings will begin.

Documents must be drawn up or translated into Bahasa Indonesia for the admission to the court. Additionally, representation of parties in court can be undertaken by an Indonesian advocate holding a license issued by the Indonesian Bar Association.

It is important to note that foreign court judgments cannot be enforced in Indonesia. New court proceedings have to be commenced and the whole matter has to be re-litigated under Indonesian law. However, a foreign judgment may serve as supporting evidence in the Indonesian court proceeding.

6.4 Arbitration

The legal basis of arbitration in Indonesia is regulated by Law No.30 of 1999 on Arbitration and Alternative Dispute Resolution **("Arbitration Law")**. The Arbitration Law was established to diminish the interference of courts, reduce the judicial burden, and assure the enforceability of arbitral awards.

It is important to note that Indonesia is a participant of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("**New York Convention"**). As such, it has exercised the reciprocity and commerciality of arbitral reservations.

The five main arbitral institutions in Indonesia are:

i. Indonesian National Board of Arbitration/ *Badan Arbitrase Nasional Indonesia* (***BANI***);
ii. Indonesian Capital Market Arbitration Board/ *Badan Arbitrase Pasar Modal Indonesia* (***BAPMI***);
iii. National Sharia Arbitration Body/ *Badan Arbitrase Syariah Nasional* (***BASYARNAS***);
iv. Alternative Dispute Resolution Institution for Financial Services Sector / *Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan* (**LAPS SJK**); and
v. Indonesia Energy Dispute Arbitration Board / *Badan Arbitrase Sengketa Energi di Indonesia (**BASE**).*

Under the Arbitration Law, any legal entity may become a party to arbitration proceedings. The parties in dispute initiate the arbitration proceedings based on an arbitration agreement that must be made in writing.

A. Tribunal Selection

The Arbitration Law provides for conditions where the parties agree to appoint a single arbitrator or two arbitrators with the authority to appoint the third. However, nothing in the law explicitly disallows the parties from arranging a tribunal with an alternative composition.

B. Arbitral Rules

Parties to a dispute may, however, choose an ad hoc or institutional arbitration, subject to such rules as agreed between the parties. The parties can also decide modifications of arbitral rules in writing, given that any such modifications do not contravene mandatory provisions of Arbitration Law or rules of the arbitral governing institutions.

6.5 Enforcement of Arbitral Awards

A. Domestic Arbitral Awards

Based on the Arbitration Law, the arbitral award made by arbitrations conducted through a domestic arbitration forum shall be considered as final and binding. Appeal against the arbitral award may not be filed. The arbitrator, or their proxies, must subsequently submit and register the award to the relevant District Court. If the unsuccessful party refuses to comply with the award, the winning party may request the Chief Judge to issue an enforcement order within 30 days after the request is submitted. The district court that holds jurisdiction to receive and enforce the award shall be the district court holding jurisdiction over and located in the domicile of the defendant. Before the issuance of execution order, the district court must ensure that:

i. The disputing party had originally agreed to settle their dispute through the Arbitration process with the offending party, as proven through the document signed by the Parties;
ii. The dispute arises from commercial matters. If it is about the rights that, according to the laws and regulations, are fully controlled or held by the offending party; and
iii. The award is not contrary to decency and public order.

In case the district court concludes that an enforcement request does not comply with the requirements (i.e. the award contradicts decency and/or public order), then the request cannot be enforced. The refusal is final and binding without any option for any legal action.

B. Foreign Arbitral Awards

The enforcement procedure for foreign arbitral awards starts with award registration at the office of the relevant District Court. Under the Arbitration Law, a foreign arbitral award may only be enforced after the Indonesian court has recognized such award through the issuance of ‘exequatur’ under the Central Jakarta District Court (except when the Republic of Indonesia is a party to the arbitrated dispute).

If the losing party does not fulfil its obligations under the exequatur, the party enforcing the order may request the Chief Judge of the District Court to issue an enforcement order (a writ of execution) of such award.

Notwithstanding the sufficient regulatory framework, the disputing parties enforcing arbitral awards are practically confronted with challenges due to varied judgements of Indonesian

courts, particularly on the validity of the arbitral agreements and enforcement of foreign arbitral awards.

C. Annulment of Domestic Arbitral Awards

Only domestic arbitral awards can be challenged by filing an annulment application by one of the Parties within 30 days after the delivery and registration of the award to the registrar of the relevant District Court, under the following conditions:

i. It was discovered that documents that are falsified or declared to be falsified were submitted in the investigation;
ii. Undisclosed documents, which have a decisive effect on the verdict, are discovered; or
iii. The decision was a result of deception carried out by one of the parties during the examination of the dispute.

The court shall issue an annulment decision within 30 days, but a decision that approves such an annulment can be remedied through the legal action, only via cassation, within 14 days after the decision's announcement. On the other hand, a decision stating the rejection of an annulment cannot be remedied.

7. Restructuring, Bankruptcy, and Liquidation

7.1 Bankruptcy & Suspension of Debt Payment

Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts **("Bankruptcy Law")** recognizes two types of proceedings:

i. Bankruptcy proceeding, under which the debtor loses its power to manage and dispose of its assets; and
ii. Suspension of Obligation for Payment of Debts / *Penundaan Kewajiban Pembayaran Utang* **("PKPU")** proceeding, under which the debtor, upon request by the creditor or the debtor itself, is given temporary relief to restructure its debts and continue in its business activities, ultimately to settle their debts from the profits of their activities.

The table below shows the key distinctions between Bankruptcy and PKPU:

	Bankruptcy	PKPU
Purpose	Liquidation or restructuring to resolve debts by distributing the proceeds of the sale of the debtors's assets to the creditors	Restructuring to continue the entity's business activities to eventlually resolve their debts
Management of Debtor's Assets	Managed by a curator and, supervised by the judge	Jointly managed by an administrator and debtor
Voting Rights	Unsecured creditors (**Note:** *Secured creditors are entitled to vote on matters in bankruptcy only to the extent of any unsecured debt*)	All creditors
Appeal	Declaration of bankruptcy may be subject to direct review by the Supreme Court	The court termination process results in the debtor being declared bankrupt with no further right to review

A corporation shall be considered “insolvent” if, (i) it has two or more creditors and, (ii) it fails to pay, at least, one debt when it is due. Once a company or individual fails to pay, at least, one of its due debts, one or more of its creditors, the public prosecutor, or the individual or company could file a bankruptcy petition to the Commercial Court.

Under specific circumstances, a bankruptcy petition may only be filed by the following parties:

i. Central Bank of Indonesia if the debtor is a bank;
ii. the Indonesian Capital Market Supervisory Agency (*Badan Pengawas Pasar Modal*), or currently, the Financial Services Authority (*Otoritas Jasa Keuangan* or “**OJK**”) if the debtor is a securities company, a stock exchange, a clearing and guarantee agency, or a depository and settlement agency;
iii. the public prosecutor if the bankruptcy petition involves public interests; or
iv. MoF if the bankruptcy petition is against an insurance, reinsurance, pension fund, or a state-owned company in the form of a *persero*.

7.2 Termination of Suspension of Debt Payment

The administrator, the supervisory judge or any of the creditors, or the Commercial Court under its own discretion, may request the termination of PKPU if:

i. during the PKPU process, the applicant takes any action detrimental to its assets or the interests of its creditors under a bad faith;
ii. the applicant carries out management actions, or transfers the rights to any part of its assets without authorization of the PKPU administrator during the debt suspension period;
iii. the applicant neglects the court order at the time or after the suspension of payment is granted, or neglects to do what the Administrator requires in the interests of the debtor’s assets;
iv. the applicant’s assets are in such a state that a suspension of payments would no longer be feasible; or
v. the applicant is in such a condition that it cannot be expected to fulfil its obligations towards the creditors on time.

7.3 Effects on Bankruptcy Declaration

A. Impact to Debtors

After the court issues the debtor’s bankruptcy status, the debtor will lose its capacity to manage and dispose of their bankruptcy assets. The powers to undertake any legal action in respect of such assets extend to the appointed curator. The bankruptcy assets consist of all the debtor’s assets at the time of the declaration of bankruptcy.

Under the general rule, the bankruptcy of a limited liability company does not extend to its shareholders, as they are “safeguarded” under the limited liability concept. The maximum contribution expected from the shareholders of the company would be payment of the remaining unpaid amount of their capital contributions.

If the bankruptcy is due to the fault or negligence of the BoD and the company’s assets are insufficient to cover the debt, every member of the BoD shall be collectively responsible for the remaining liabilities/debts not settled within the period of five years.

B. Impact on Creditors

Preferred or secured creditors have the priority to claim the proceeds derived from the sale of assets that have been pledged as security, in a pledge (*gadai*), fiducia (*fidusia*), mortgage

(*hipotek/ hak tanggungan*), or privilege (*hak istimewa*). Meanwhile, unsecured/concurrent creditors share the distribution of the remaining assets and obtain repayment of their debts in a proportionate percentage. The unsecured/concurrent creditors can obtain repayment of their claims through the bankruptcy procedure, instead of individual enforcement proceeding.

Please note that only the creditors making the claim during the bankruptcy declaration period shall be eligible to claim payment of proceeds from the sales of bankruptcy assets. Payment obligations of the debtor occurring after the bankruptcy declaration cannot be paid using the proceeds. But it is possible to do that if such payment is beneficial to the overall bankruptcy assets.

In addition, the Bankruptcy Law acknowledges *"Actio Pauliana"* principle, in which any legal action of the debtor and its counterparties before the declaration of bankruptcy may be annulled if such action jeopardizes the creditor's interests.

The burden of proof in such action would lie in the hands of the debtor if the voluntary act were carried out within one year before the date of bankruptcy declaration, otherwise, the burden of proof would be in the hands of the creditor.

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