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Market Entry – Legal Pitfalls in Contracts and Negotiations

Practical risk management for Swedish investors: formalities, partners, employment, and dispute resolution. Prepared in collaboration with Yoga Partnership Legal Consultants.

In brief

A contract involving an Indonesian party is enforceable only if it satisfies the four validity requirements of Article 1320 of the Indonesian Civil Code and the formal requirements of related legislation, including the obligation to use the Indonesian language.

Nominee shareholding arrangements — including indirect structures built on loan documents — are null and void under the Investment Law, and Indonesian courts will not recognize the foreign party as a shareholder. Employment agreements and dispute-resolution clauses carry their own mandatory requirements.

The first steps for a Swedish company are to conduct legal and tax due diligence on any prospective counterparty or local partner, and to prepare bilingual contracts with the Indonesian text professionally reviewed.

Fast facts

The figures and requirements below summarize the chapter at a glance. Each is treated in context in the sections that follow.

Key regulations	Indonesian Civil Code (Art. 1320) Law No. 24 as amended of 2009 (language) Law No. 25 of 2007 (Art. 33, investment) Law No. 13 of 2003 as amended (manpower) Law No. 40 of 2007 as amended (company law)
Responsible authorities	Ministry of Investment / BKPM (business licensing) Ministry of Manpower (PKWT) Ministry of Law (company establishment) Central Jakarta District Court (execution of international arbitral awards)
Contract language	Indonesian required where an Indonesian party is involved; bilingual versions are standard practice
Minimum paid-up capital (PMA)	IDR 2 500 000 000

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Minimum total investment	More than IDR 10 000 000 000 per business activity, excluding land and buildings, with certain exemptions
Maximum PKWT duration	5 years, including extensions

1. Why this matters

For an investor entering Indonesia, a contract is more than a record of a deal: it is the primary protection against operational failure.

Indonesia and Sweden are both civil law jurisdictions, but the rules are applied differently, and a contract must follow specific local requirements to be recognized at all. An agreement that overlooks them can be deemed null and void.

The regulatory environment also shifts: changes of government are regularly followed by changes in laws and regulations, and implementation by the relevant officials takes time.

Well-structured contracts allocate risk, establish exit strategies, and keep enforcement realistic. They determine whether a joint venture survives a disagreement, whether share ownership is legally recognized, and whether a dispute can be resolved on acceptable terms. This chapter covers the contract-law framework, joint ventures and shareholding structures, employment agreements, and choice of law and forum.

2. The regulatory and market landscape

2.1 Contract law fundamentals

Contracts are governed by the Indonesian Civil Code. Indonesia follows the principle of freedom of contract: parties may agree on any terms, provided the agreement meets the four requirements of Article 1320 — consent free of duress, fraud, or mistake; legal capacity of the parties; a certain and tradeable subject matter; and a legal cause not contrary to law, morality, or public order. Breach of the first two makes a contract voidable at a party's request; breach of the latter two makes it null and void.

Several statutes bear directly on the legal-cause requirement. Law No. 24 of 2009 (Art. 31), elaborated by Presidential Regulation No. 63 of 2019, requires the Indonesian language in agreements involving Indonesian parties. Law No. 40 of 2007 on Limited Liability Companies, as amended by the Job Creation legislation, governs who may represent a company and when board, commissioner, or shareholder approval is required. Law No. 7 of 2011 requires payment in Indonesian rupiah for monetary transactions within Indonesia, with exemptions including foreign trade and international financing agreements.

Sector-specific laws apply on top: employment contracts must comply with manpower law, distribution and agency contracts with trade law.

2.2 Joint ventures, local partners, and nominee arrangements

A Swedish company earning income in Indonesia must generally establish a foreign investment limited liability company (PT PMA).

Where a business field is not open to 100 % foreign ownership under the Positive Investment List, a joint venture with a local partner is required. The partner may be an Indonesian citizen or an Indonesian-owned limited liability company; in practice, partnering with a company carries lower risk than partnering with an individual.

The joint venture agreement is normally bilingual, signed before a public notary, and the articles of association of the PMA company must be consistent with it. Disputes typically arise where terms are general and open to multiple interpretations — precise drafting for each future scenario, preceded by legal and tax due diligence on the partner, is the main safeguard.

Nominee arrangements — an Indonesian party holding shares on behalf of a foreign party to circumvent ownership restrictions — are prohibited. Indonesian law does not recognize trust arrangements, and Article 33 of the Investment Law declares agreements or statements confirming that shares are held for another party null and void; Article 48 of the Company Law requires shares to be issued in the name of their genuine owner. Courts will not recognize the foreign party as a shareholder, and false statements supporting a nominee structure may attract investigation. Indirect nominee structures built on loan documents carry the same legal consequences, even where no document states the true ownership.

2.3 Employment agreements

The Manpower Law (Law No. 13 of 2003, as amended by the Job Creation Law) recognizes two agreement types: the definite-period agreement (PKWT) and the indefinite-period agreement (PKWTT). A PKWT applies to work of a specified period or a particular job, runs at most 5 years including extensions, must be written in Indonesian in Latin script, must be registered with the Ministry of Manpower, and may not include probation.

A PKWTT may include probation of up to 3 months if expressly stated, and may be made verbally or in writing.

Agreements must include wages, rights and obligations, job details, and — for PKWT — duration; they cannot be revoked or amended without the agreement of both parties.

Foreign workers may be employed under a PKWT with an Indonesian company or under a technical assistance agreement with a foreign provider. They must hold qualifications matching the position, at least 5 years of relevant experience, and must transfer expertise to Indonesian assistants. Foreigners may not hold human resources positions. Non-compliance exposes employers to financial liability, disputes, and administrative and criminal sanctions.

2.4 Choice of law and dispute resolution

Parties are free to choose the governing law and forum, including foreign law and arbitration inside or outside Indonesia. A choice of foreign law is valid and binding on an Indonesian party except where it contravenes Indonesian public policy.

Where one party is Indonesian and the project is in Indonesia, the Indonesian party may press for Indonesian law and the courts or the Indonesian National Arbitration Board (BANI); in transnational contracts, arbitration is the usual choice. Enforcement of an international arbitral award requires an execution order (exequatur) from the Central Jakarta District Court, subject to appeal to the Supreme Court, and the award must not be contrary to public order.

Enforcement has in past cases been hindered or delayed by spurious public-policy arguments — expectations should be set accordingly.

3. Ownership structures: options and requirements

Where the intended business field is open to full foreign ownership, the choice of structure is straightforward. Where it is not, the options and their consequences differ sharply:

	100 % foreign-owned PMA	Joint venture PMA	Nominee / loan arrangement
Suitable for	Business fields open to full foreign ownership under the Positive Investment List (since 2021, e.g. wholesale trade)	Business fields with foreign ownership caps	No lawful use
Legal status	Fully compliant; shares held directly by the foreign investor	Compliant; governed by the joint venture agreement and consistent articles of association	Null and void under Art. 33 of the Investment Law; applies equally to loan-based structures
Key requirement	Paid-up capital IDR 2 500 000 000; total investment above IDR 10 000 000 000 per business activity	Precise joint venture agreement: governance, profit sharing, exit, law and forum; due diligence on the partner. Paid-up capital IDR 2,5 million; total investment above IDR 10 billion per business activity	—

	100 % foreign-owned PMA	Joint venture PMA	Nominee / loan arrangement
Risk profile	Lowest legal risk; capital thresholds apply	Partner disputes where terms are general; lower risk with a corporate partner than an individual	No shareholder recognition; possible investigation for false statements

Since the Positive Investment List opened more business fields in 2021, a number of PMA companies have restructured from nominee arrangements into fully compliant structures with 100 % direct foreign ownership. Companies with legacy structures should review whether the same route is now open to them.

4. Practical considerations

Formalities decide enforceability. Contracts drafted solely in English ignore the Indonesian-language requirement and risk being declared invalid; bilingual drafting with a professionally reviewed Indonesian version is standard. Certain contracts — land purchase, fiduciary security, share transfers in acquisitions — additionally require notarization or registration. A notarized deed also has strong evidentiary value and is worth considering where a counterparty lacks an established track record.

Signatory authority is checked, not assumed: the counterparty's articles of association determine whether a director signs alone or jointly and when board, commissioner, or shareholder approval is required, and spousal consents may be needed. All conditions-precedent documents should be in hand before signing. Finally, the regulatory environment moves — routine monitoring of the regulations applicable to the company's line of business, and integration of commercial, legal, tax, labor, and licensing compliance, protect the contract through its life, not only at signing.

The Indonesian market does not punish foreign investors for being foreign; it punishes those who assume that a commercial agreement alone is sufficient. The most successful Swedish companies in Indonesia are not necessarily those with the most sophisticated contracts, but those that treat contracts, licensing, corporate authority, regulatory compliance, and practical enforceability as a single legal framework.

Checklist

Taken in sequence before and after signing, the following steps address the risks identified in this chapter.

1. Verify the counterparty: legal status, ownership, and business licensing.
2. Check signatory authority against the articles of association, including required corporate approvals and spousal consents.
3. Confirm the contract satisfies the four Article 1320 requirements and applicable sector regulation.
4. Assess the commercial terms of the contract alongside the legal review.
5. Prepare bilingual contracts, with the Indonesian version professionally reviewed.
6. Complete required formalities: notarization and registration where applicable.
7. Obtain all conditions-precedent documents before signing.
8. Agree choice of law and forum with realistic enforcement expectations (arbitration versus litigation).
9. Monitor regulatory changes and the parties' rights and obligations throughout the contract period.

Common pitfalls

The mistakes below recur among foreign investors in Indonesia. Each is avoidable with the measures described in this chapter.

- Signing English-only contracts, which conflicts with the Indonesian-language requirement and can render the agreement unenforceable or invalid.
- Drafting joint venture agreements in general terms without clear shareholder rights, governance, profit sharing, or exit provisions — the most frequent source of disputes with local partners.
- Using nominee or loan-based shareholding structures, which are null and void and leave the foreign investor without recognized ownership.
- Skipping legal and tax due diligence on the local partner before committing to a joint venture.
- Overlooking mandatory employment agreement requirements — PKWT registration, language, the 5-year limit, and the prohibition on probation — which exposes the employer to sanctions.
- Assuming a foreign arbitral award enforces automatically in Indonesia, when execution requires a court order and has been delayed by public-policy objections.

Sources and further reading

This chapter draws on the legislation cited below.

- Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), Art. 1320
- Law No. 24 of 2009 on the national language, Art. 31; Presidential Regulation No. 63 of 2019
- Law No. 40 of 2007 on Limited Liability Companies, as amended by the Job Creation legislation

- Law No. 7 of 2011 on Currency
- Law No. 25 of 2007 on Investment, Art. 33
- Law No. 13 of 2003 on Manpower, as amended

About the contributor

This article was prepared by Yoga Partnership Legal Consultants, an Indonesian law firm advising both local and international clients on corporate, regulatory, and compliance matters. The firm provides practical legal guidance on navigating Indonesia's evolving regulatory landscape, with a focus on helping companies strengthen compliance frameworks, manage legal risk, and operate with clarity under the new corporate liability regime.

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