PHOTO:REUTERS

EXPANDING INTO INDONESIA

BY PAUL NG

Investing in South-east Asia's largest economy has often proved challenging with bureaucratic red tape, but significant improvements have been made to reduce administrative inefficiencies

AS SOUTH-EAST Asia's largest economy, Indonesia is an attractive investment proposition for foreign investors keen to tap into this rapidly developing economy. Against this background, however, the process of investing in Indonesia has often proved challenging for foreign investors, with bureaucratic red tape and administrative inefficiencies contributing to Indonesia's ranking of 109 out of 189 countries in the World Bank's Ease of Doing Business Index. That being said, significant improvements have been made over the past few years to reduce administrative inefficiencies confronting foreign investors. The Indonesian government has also, since September 2015, introduced a series of economic stimulus packages (Paket Kebijakan Ekonomi or PKE) aimed at boosting gross domestic product (GDP) growth and making Indonesia a more attractive country for foreign investors.

There are, save for certain exceptions, only two types of legal entities which can be set up by foreigners wishing to do business in Indonesia: foreign-owned limited liability companies (Perseroan Terbatas Penanaman Modal Asing or PT PMA); or representative offices (Kantor Perwakilan Perusahaan Asing or KPPA). Previously, the process for incorporating a PT PMA could take a significant amount of time to complete. This timeframe for this process has since been shortened considerably. Under the second PKE unveiled by the Indonesian government on Sept 29, 2015, further steps have been taken to streamline the process.

Under BKPM Regulation No 14/2015, effective from Oct 26, 2015, foreign entities investing no less than 100 billion rupiah (S$10.6 million) and/or which will employ no less than 1,000 local workers may apply for a "fast track" incorporation of a PT PMA with the BKPM in a process taking three hours to complete. Under this three-hour investment licensing service, the foreign entity will not only be able to obtain the necessary investment licence (Izin Investasi, which is essentially an accelerated principle business licence) from the BKPM, but also various other permits, licences and approvals necessary to conduct business in Indonesia. These include the tax registration number, foreign workers recruitment plan, work permits for foreign staff, importer identification number as well as customs registration number. While the measures taken under the second PKE and BKPM Regulation No 14/2015 are a step in the right direction, it should be noted however, that the three-hour investment licensing service is subject to the qualifications mentioned above. In addition, even if these qualifications are met, there may still be a need for the foreign investor to make potentially time-consuming applications for various sector specific licences and permits with other Indonesian government entities.

The first port of call for foreign entities looking to invest in Indonesia should always be Indonesia's Negative Investment List, which sets out a range of business sectors which are either closed to foreign investment or open but with various restrictions stipulated, including the maximum foreign shareholding, or fully open to foreign investment without restrictions.

Under the 10th PKE announced on Feb 11, 2016, the Indonesian government outlined various proposed changes to the Negative Investment List, which was last amended in 2014 (2014 Negative Investment List), the objective being to increase foreign direct investment in Indonesia in various business sectors. Following the 10th PKE announcement, PD No 44/2016 was enacted on May 18, 2016, setting out the latest revised Negative Investment List (the 2016 Negative Investment List). Under the 2016 Negative Investment List, various business sectors which were either closed or restricted under the 2014 Negative Investment List are now fully open to foreign investment. These include:

- **Communications and informatics sector:** E-commerce activities (eg online marketplaces, daily deals, price grabbers and/or online classifieds) involving investments of more than 100 billion rupiah, which was a business sector not specifically mentioned in the 2014 Negative Investment List.
- **Health care sector:** ***1.*** Healthcare business and management consultancy, foreign ownership was previously capped at 67 per cent foreign ownership under the 2014 Negative Investment List; ***2.*** Medical equipment rental (previously capped at 49 per cent); ***3.*** Medical laboratory or check-up clinics (previously capped at 67 per cent); ***4.*** Manufacturing of raw materials for medical pharmaceuticals (previously capped at 85 per cent).
- **Public works sector:** Toll road management (previously capped at 95 per cent).
- **Trade sector:** Cold storage (previously capped at 33 per cent for Sumatra, Java and Bali and 67 per cent for Kalimantan, Sulawesi, Nusa Tenggara, Maluku and Papua).
- **Tourism and creative economy sector:** ***1.*** Restaurants (previously capped at 51 per cent); ***2.*** Bars, cafes and operation of sport facilities (previously capped at 49 per cent or 51 per cent if in partnership with Indonesian SMEs).

Other than fully opening up various business sectors to foreign ownership, there are also a number of business sectors where the maximum permissible foreign ownership has been increased and these include:

- **Communications and informatics sectors:** Telecommunication services (eg Internet service providers), the foreign ownership cap for which has been increased to 67 per cent, from 49 per cent foreign ownership cap under the 2014 Negative Investment List.
- **Manpower sector:** Professional training (eg computer, language, reading courses), the foreign ownership cap for which has been increased to 67 per cent (49 per cent foreign ownership cap previously).
- **Public works sector:** For construction consultancy services involving advanced technology; high risk and/or value of more than 100 billion rupiah, the foreign ownership cap has been increased to 67 per cent (or 70 per cent for Asean investors) from 55 per cent foreign ownership cap previously.
- **Tourism and creative economy sector:** ***1.*** Motels, the foreign ownership cap for which has been increased to 67 per cent (or 70 per cent for Asean investors) from 49 per cent foreign ownership cap previously; ***2.*** Meetings, incentives, conferences, and exhibitions (MICE) operations, the foreign ownership cap for which has been increased to 67 per cent (or 70 per cent for Asean investors) from 51 per cent foreign ownership cap previously.
- **Trade sector:** ***1.*** Department stores (with retail space of 400-2,000 sq m), the foreign ownership cap for which is now stipulated as being 67 per cent (closed to foreign investors previously); ***2.*** Distribution, not affiliated with production and warehousing, the foreign ownership cap for which has been increased to 67 per cent (33 per cent foreign ownership cap previously).
- **Transportation sector:** ***1.*** Passenger land transportation, the foreign ownership cap for which is now stipulated as being 49 per cent (closed to foreign investors previously); ***2.*** Air transport support services (eg computer reservation and ground handling services), the foreign ownership cap for which has been increased to 67 per cent (49 per cent foreign ownership cap previously); ***3.*** Freight forwarding services, the foreign ownership cap for which has been increased to 67 per cent (49 per cent foreign ownership cap previously); ***4.*** Maritime cargo handling services, the foreign ownership cap for which has been increased to 67 per cent (or 70 per cent for Asean investors) from 49 foreign ownership (or 60 per cent for Asean investors) cap previously.

In addition to fully opening certain business sectors to foreign investment or increasing foreign ownership limits, the 2016 Negative Investment List also specifies that retail trading via mail or Internet orders, being a business sector previously closed to foreign investment, is now open but subject to partnership with domestic small and medium-sized enterprises (SMEs). There is presently no clarification as to how such partnership with domestic SMEs is to be implemented. ■

The writer is a partner of Rajah & Tann Singapore. He has extensive experience supporting businesses on their investments into Indonesia and has previously been based in Jakarta for more than five years.