

CORONAVIRUS (COVID-19) AND INDONESIA

A Practical Checklist For Indonesian Business Leaders

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This is a practical checklist to help Indonesian business leaders navigate workforce and legal issues relating to the COVID-19 coronavirus situation. The checklist is not intended to be exhaustive; new choices and challenges may rapidly emerge. Above all else, business leaders must adopt a flexible approach and adapt to changes as they come.

These are still early days of the outbreak in Indonesia, one of the last countries in SE Asia to report local infection. While the government has stepped up measures to stop the spread of the novel strain, some business leaders have called on the Health Ministry to adopt a more open and transparent approach to the coronavirus situation.

For a 2 minute speed read of our key recommendations, please refer to the [Appendix](#).

1. REVIEW CORPORATE POLICIES

Indonesian health laws require both the public and private sector to use efforts to overcome an outbreak of infectious disease. As such, business continuity plans and workplace health and safety procedures should be reviewed and, if needed, optimised to deal with a facility shutdown or any other unforeseen circumstances.

Well-developed plans help restore order and mitigate losses after a voluntary or mandatory shutdown. During an outbreak, the government has the power to order a mandatory shutdown of various public infrastructure and other facilities. Under Article 13, para (3) of the Ministry of Health Regulation No. 1501/MENKES/PER/X/2010 regarding Specific Infectious Disease that may Cause Epidemics and Mitigation Efforts, the government may temporarily dismiss schools, close public facilities, and conduct intensive observations and surveillance for the purposes of mitigating epidemic risks.

Boards may conduct meetings by teleconference, video conference or other electronic means which enable all of the participants to see, hear and participate directly in the meeting, provided that this is allowed under the company's constitutional documents. A similar position applies for general meetings of shareholders, provided that participating members make up a quorum for the meeting.

Employers must enforce work safety and occupational health programs under the labour law. This includes implementing systems to deal with disease prevention and management, cleanliness and hygiene, biological controls and the promotion of workplace health and comfort.

2. MONITOR NEW GOVERNMENTAL GUIDANCE, DIRECTIVES AND REGULATIONS

Businesses are advised to appoint a working team to monitor, process and implement any relevant guidance and directives from supervising ministries and government offices, particularly in sectors which are directly impacted. Restrictive measures by the Indonesian government include travel and import bans,

quarantine, evacuation and scanning and surveillance at ports and airports, similar to endemic countries around the world.

Standard operating procedures may also need to be reviewed to comply with restrictive measures that impact on operations. Legal uncertainties and risks should be swiftly considered, addressed and where necessary, escalated to the appropriate level for resolving.

Examples of recent measures include the following:

- on 2 March 2020, the Health Ministry instructed airlines to distribute health alert cards to passengers entering Indonesia, in view of new screening and surveillance facilities at airports;
- the Port Health Office has imposed mandatory inspections on international ships from endemic countries, prior to entering port; and
- under Regulation No. 10 of 2020, the Trade Ministry imposed a temporary ban on the import of live animals from mainland China.

3. MATTERS OF THE WORKPLACE

The Manpower Ministry, under Circular No. B.5/51/AS.02.02/I/2020, sent initial guidance to Indonesian business leaders on keeping employees in the workplace informed of latest developments and encouraging preventative measures, such as adopting a clean and healthy lifestyle.

Indonesia does not have a formal regulation about working from home (“WFH”). However, employers are entitled to set up a roster to direct employees to WFH, on a rotating basis or if they are ill. In practice, however, this is rare and the WFH policy is new to most offices in Indonesia.

Under manpower laws, employers must continue to pay salary and benefits in most circumstances, including when employees are unable to attend the workplace due to COVID-19 related matters. Employers must also consider government screening and quarantine requirements for employees who have travelled to affected countries, including any impact on visas for foreign workers. For employees with continuous sickness, payments of salary may decrease gradually, in parallel to the employees’ time spent away from the workplace.

At a general level, employers do not have the power to dismiss employees or suspend them without pay because of the disruption to the global supply chain or other facts and circumstances relating to COVID-19. However, amendments to employment agreements may be negotiated as mentioned below.

Regardless of whether they are on an individual or mass basis, terminations must involve bilateral negotiations and, if necessary, labour court approvals following non-binding mediation. Termination can also give rise to significant severance entitlements, such as long-service and separation pay.

4. CHANGES TO THE BUSINESS

Employers may negotiate amendments to employment agreements, either on an individual or collective basis, to deal with any temporary reshaping or downsizing to cope with difficult times.

Downsizing due to “force majeure” or “loss” for a continuous period of 2 years, may enable the employer to reduce certain liabilities associated with employee termination payments. However, it is uncertain how these regulatory terms would be applied in practice. In any case, these provisions are unlikely to be helpful if the business is suffering from immediate disruption and cash flow issues.

Employers may only terminate employees on the basis of a downsizing, either temporary or permanent, if the company is considered to be closed permanently based on Article 164, para (1) of the Manpower Law. Nevertheless, if termination of employees is inevitable due to major losses, the employer may still terminate, provided that the employees are willing to enter into a mutual termination agreement.

The government has also announced financial stimulus and other support to affected businesses. It is prudent to be proactive and stay abreast of any such support, such as the reduction in the price of airline tickets to certain destinations, to help ease a temporary downturn.

5. IMPACT ON COMMERCIAL CONTRACTS

COVID-19 related disruptions may adversely impact contractual terms with third parties, such as where a mandatory facility shutdown results in an inability to accept feedstock under a sale and purchase

agreement with the supplier. Suppliers, offtakers, insurers, contractors, joint venturers and lenders may be affected.

The starting point is to consider the specific terms of the contract, and the extent to which relevant clauses may operate to limit or exclude liability, or lead to other consequences. Parties may, for example, seek to invoke “force majeure” or “material adverse change” provisions. These provisions are often negotiated in the context of dealing with unforeseen events – such as a facility shutdown – which are outside of the control of the affected party.

The concept of force majeure is broadly recognised under the Indonesian civil code but the operative force majeure provision must be set out in the contract, potentially on a mandatory basis if a construction work contract. Depending on the terms of the contract, the clause may operate to suspend the contractual obligations of an affected party in the event of a local COVID-19 outbreak, or alternatively, a global pandemic if the UN decides to make such a declaration.

Under Indonesian law, the freedom of contract principle allows parties to agree on limits or exclusions of liability in prescribed circumstances. There is no legislation in Indonesia to specifically regulate international commercial contracts.

It is less common to see specific “change of law” or “illegality” provisions in commercial contracts involving Indonesia. However, these matters are often addressed in finance documents, depending on the underlying transaction.

Indonesian law does not recognise the concept of “frustration”, which may bring failed contracts to an end in many common law jurisdictions. Contracting parties in Indonesia are, however, allowed to be frustrated in the general, rather than legal, sense.

Concepts of good faith and fairness are likely to come into play, although there is no concept of hardship unless the parties have agreed for international principles, such as the UNIDROIT Principles of International Commercial Contracts, to apply.

Finally, the company should consider alternative forms of recourse for losses stemming from matters arising from the COVID-19 situation. This could include making a claim under an insurance policy, or seeking recourse under a contractual indemnity which is intended to underpin particular risks relating to the transaction.

This document provides a general summary and is for information/educational purposes only. It is not intended to be comprehensive, nor does it constitute legal advice. Specific legal advice should always be sought before taking or refraining from taking any action.

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APPENDIX – OVERVIEW OF OUR RECOMMENDATIONS (2 MINUTE SPEED READ)

No.	Checklist Item	Recommendation	Risk/Impact
1.	Review Corporate Policies	<p>Prepare/review business continuity plans to help restore order and mitigate losses, after an unforeseen or unexpected event such as a shutdown.</p> <p>Review and enforce work safety and occupational health program as required under Indonesian law.</p> <p>Virtual board/shareholder meetings permitted under Indonesian law, if company constitution allows.</p>	<p>Increased losses and/or disruption to operations, in the event of an office or facility shutdown or other unplanned event affecting the workforce.</p> <p>Various administrative sanctions for failure to comply with Indonesian work safety and occupational health laws.</p>
2.	Monitor New Governmental Directives and Guidance	<p>Appoint working team to monitor, process and implement governmental guidance and directives, such as travel and import bans, quarantine, shutdowns and increased inspections and surveillance at ports, airports and land based checkpoints.</p> <p>Consider necessary changes to standard operating procedures and ensure adequate communication to all parts of the business.</p>	<p>It is recommended that businesses following circular letters/guidance from supervising ministries.</p> <p>Consequences for failure to comply with governmental directives could result in administrative sanctions or potentially, criminal charges.</p>
3.	Deal with Employment Issues	<p>Review guidance from Manpower Ministry.</p> <p>Consider implementing working from home policy and/or policy to deal with ill employees.</p> <p>Travel policies also need to be reviewed.</p>	<p>Salary and benefits must continue to be paid in most circumstances.</p> <p>Various administrative sanctions for failure to comply with Indonesian manpower laws.</p>
4.	Adapt to Changes to the Business	<p>Consider negotiating amendments to employment agreements to deal with any required temporary business reshaping or downsizing.</p> <p>Individual/mass terminations must involve bilateral negotiations and, if needed, labour court approval following non-binding mediation.</p>	<p>Various administrative sanctions for failure to comply with Indonesian manpower laws.</p> <p>Limited exceptions in manpower law for downsizing due to “force majeure” and “loss”.</p>
5.	Identify and Address Impact on Contracts with Third Parties	<p>Set up process to efficiently review and escalate contractual/legal issues as required.</p> <p>Consider “force majeure” and “material adverse change” provisions in commercial contracts. The analysis may change as circumstances evolve.</p> <p>Consider potential recourse under insurance policies and/or other contractual indemnities.</p>	<p>Loss of opportunity to claw back losses and/or negotiate a more favourable position.</p> <p>Open the door to claims for breach of contract and/or increased exposure to legal claims.</p> <p>No concept of frustration under Indonesian law.</p>

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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