



DEEPENING TIES

China is already one of Indonesia's top sources of foreign investment, and with Asia's largest economy expanding its Belt and Road programme and other initiatives, the flow of capital is all set to continue.

But while plenty of opportunities lie ahead for investors in Indonesia, what challenges would they need to overcome?

BY ASIAN LEGAL BUSINESS

— With a population of 268 million and a nominal GDP of more than \$1 trillion, Indonesia is, without a doubt, a heavyweight in Southeast Asia. And the country is also getting increasingly intertwined with the second-biggest economy in the world – China.

"Bilateral relationship between China and Indonesia is growing at a steady pace with lots of mutual respect and trust, especially so under the helm of President Xi Jinping and President Joko Widodo, as President Jokowi had reiterated in many international summits, expressing his desire that Indonesia wishes to seize on the momentum of the Belt & Road Initiative," says Will Fung, senior foreign counsel at Grandall Law Firm.

Fung believes that Indonesia will focus on infrastructure development and connectivity in the next decade or two, citing examples such as the Jakarta-Bandung high-speed railway (HSR) project, and that such cooperation will certainly boost the economic ties between the two countries.

"We believe that the relationship between China and Indonesia is getting even better in the past years. From our perspective as corporate lawyers, we

have seen a lot of investment made from China to Indonesia, either entirely owned by Chinese investors or jointly owned by Indonesian investors," says Robert Hasan, an associate at Ivan Almada Baely & Firmansyah Law Firm (IABF).

Hasan notes that the chief of the Indonesia Investment Coordinating Board (BKPM) recently mentioned that "over the last five years, China has gone from being the 13th largest international investor in Indonesia to arguably number one today."

Patrick Wang, managing partner at T&C Law Firm, observes that there are a lot of Chinese domestic companies going to Indonesia to invest in, or enter into joint ventures in, different industries like mining, manufacturing and infrastructure.

"In terms of investment, in just over five years, China has risen from being the 12th largest source of foreign investment in Indonesia to now being the third-largest, after the United States and Japan. In the past five years, the amount of newly signed contracts and turnover of completed projects in Indonesia by Chinese players have increased by 2.16 times and 1.92 times respectively," says Fung.

BOOM FROM THE BELT

One major factor driving this growth in investment is China's ambitious Belt and Road Initiative (BRI) to build connective infrastructure around the region.

"Since the promotion of BRI began in 2013, China has been the largest trading partner of Indonesia for many years, and its advantage is becoming increasingly obvious. In 2016 alone, China was not just the largest import market but also the largest export market for Indonesia. In the first half of 2018, bilateral trade between China and Indonesia increased by 28 percent year-on-year reaching \$37.4 billion," says Fung.

"There are solid reasons to believe that China will soon become the largest foreign investor in Indonesia in the next 10 years, as BRI and 'maritime power' have given the opportunity for the two nations to align their respective strategies," Fung adds.

According to statistics from China's Ministry of Commerce, China's direct investment in Indonesia totalled \$1.682 billion in 2017. By the end of 2017, China's stock of direct investment in Indonesia was \$10.539 billion.

Observers say the number of Chinese enterprises seeking investment cooperation in Indonesia is increasing, covering an increasingly wide range of fields, and large-scale investment projects keep emerging. The main areas of Chinese investment in Indonesia include mining and metallurgy, agriculture, power, real estate, home appliances and electronics, and digital economy.

Legal professionals are seeing evidence of this through their portfolio of clients.

"In terms of the sectors--natural resources, mineral and industrial. Raw materials like cement manufacturing," says Wang.

Indonesia's volatile political scene its elections might have put off some investors previously, but now that the elections are over, things are improving.

"Indonesia is a multi-ethnic and multi-religious country. Political stability and multi-racial relations would be one of the issues of concerns to Chinese investors," says Fung.

"We believe that the Belt and Road Initiative may bring more impact to Indonesia in the upcoming years as the presidential election process in Indonesia has been completed, which certainly gives more confidence to the foreign investors (including from China)," says Hasan.

He cites the Jakarta-Bandung high-speed railway being built by a Chinese consortium and some Indonesian partners as an example of closer cooperation via the BRI.

But Chinese investors must be careful to not rock the boat unnecessarily.

"Chinese enterprises and their seconded senior management personnel should fully respect the religious beliefs (being the largest Muslim nation in the world) and customs of local residents, do as the Romans do and carry out social activities in accordance with local etiquette standards, and not be seen as a threat to seize the economy pie with the locals," Fung cautions.

OPPORTUNITIES AHEAD

Going forward, there will be room to expand for Chinese companies, and explore new fields of opportunities.

"China and Indonesia can promote more complementary industrial cooperation in resources, minerals, fisheries, manufacturing and agriculture. Indonesia is rich in palm oil, coal, nickel, natural gas, oil and other mineral resources, as the domestic growth within China increases, China would certainly need and will indefinitely increase its imports on such commodities from Indonesia," says Fung.

"On the other hand, Indonesia may require capital and technology inflow to assist in the development of its very own enormous potential for growth. In this regard, China can offer real and substantial assistance and cooperation for the processing and utilisation of resources and energy in Indonesia."

Fung feels China is both able and willing to provide better technologies for Indonesia's agriculture and fisheries sectors.

Others say China is eager to export some of its innovative tech business

models to an untapped market like Indonesia.

Hasan believes the Chinese investments in Indonesia is heading to the field of information technology, especially in the field of P2P and equity crowdfunding. This is about the issuance of Chairman of Financial Service Authority (OJK) Regulation No. 37/POJK.04/2018 of 2018 regarding Equity Crowdfunding based on Information Technology at the end of 2018 (i.e. 31 December 2018).

"We have seen in the past that some Chinese investors requesting legal advice mainly on: (i) construction (EPC) for power plant; (ii) the business activities of lending and borrowing money services based on information technology (commonly known as peer-to-peer lending or P2P); and (iii) application services and/or content through internet services (OTT Services)," says Hasan.

But he says that OTT services have not been regulated in Indonesia. "There is only a Circular Letter No. 3 of 2016 regarding the Provision of Application Services and/or Content through Internet (Over The Top) (the MOCI Circular), which was issued with the purpose to give understanding to the OTT services providers and telecommunication providers to prepare themselves to comply with the regulation of the OTT services which currently is being prepared by the Ministry of Communication and Informatics," Hasan adds.

"Under the MOCI Circular, the OTT services may be provided by foreign individuals or business entities under the condition that they must establish permanent establishment in Indonesia based on the prevailing regulations in the area of tax," says Hasan.

Once the world's factory, China's shift away from that role may soon fall to Indonesia.

"With China's manufacturing industry aiming to relocate and shift their production lines in the ASEAN region in large numbers, Indonesia may wish to accommodate, formulate and promulgate on more favourable policy for their foreign direct investments, this would certainly result in helping the creation of more jobs for Indonesians at large," says Fung. 