K-CASE Lawyer, Sun Lawyers LLP, and Kingbridge Sun Kuong on Cross-Border Investment

A collaboration project between K-CASE Lawyer, Sun Lawyers LLP and Kingbridge Sun Kuong Law Firm

About The Firms:

K-CASE Lawyer is a law firm specializing in the entertainment and lifestyle industry in Indonesia. It is also the first esports-dedicated law firm in Southeast Asia. With a network spanning China, Malaysia, Japan, Australia, Thailand, and Hong Kong, our firm offers comprehensive legal services tailored to clients' needs. Our commitment to understanding both legal systems and industry practices ensures good corporate governance and cost-effective solutions for our clients. K-CASE Lawyer played a pivotal role in shaping Indonesia's esports landscape, contributing to the formulation of three key esports policies now in force nationwide. K-CASE Lawyer's achievements have led to K-CASE being the only solely Indonesian law firm to be nominated as a finalist in the Technology, Media, and Telecommunication in the Southeast Asian ALB Awards 2023.

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Sun Lawyers LLP is a Hong Kong-based medium-sized law firm established in 2003 with the aim to provide an integrated and comprehensive range of legal services to our international and local clientele. Our philosophy is to provide a down-to-earth approach to delivering quality services and developing long-term client relationships. In addition to our current services in corporate, family, civil, and criminal law, commercial and property transactions, wills, probate, and notarization, we are expanding to cater to the increasing demand for IPOs, corporate finance, trust, asset management, and cross-border matters. In May 2013, we became the first and then only Asian member of Eurolegal, a professional alliance comprising independent small and medium-sized law firms in European countries. We continue to expand our network, in particular in the Greater Bay Area and the Belt and Road Initiative areas, to provide first-class legal service to our clients.

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Kingbridge Sun Kuong Law Firm ("KSK") is the first Guangdong-HongKong-Macau Joint Venture Law Firm in Guangzhou. KSK is jointly set up by Kingbridge Law Firm (Guangdong), Sun Lawyers LLP (Hong Kong) and KSC Law Firm (Macau), and is located in the China (Guangdong) Pilot Free Trade Zone in the Nansha Area of Guangzhou. KSK provides clients with the highest quality of professional services, mainly focusing on Civil and Commercial Law, Cross-Border and Foreign-Related Legal Services, and work towards achieving standardisation, expansion, specialisation, and international recognition. In 2023, KSK has been nominated for the ALB awards, including "Rising Law Firm of the Year : South China & Central China - Local" and "Free-Trade Zone Law Firm of the Year : South China & Central China". And has successfully been nominated for the "GBA Law Firm of the Year (PRC)" at ALB Hong Kong Law Awards 2024.

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In an increasingly interconnected global economy, the business landscapes of Indonesia, China, and Hong Kong offer unique opportunities and challenges for investors and companies alike. This comprehensive guide, a collaborative effort by K-CASE Lawyer, Kingbridge Sun Kuong, and Sun Lawyers LLP, aims to provide valuable insights into key aspects of cross-border investment and business operations across these dynamic markets. Drawing on our combined expertise and local knowledge, we explore investment topics ranging from Indonesia's investment policies to China's Belt and Road Initiative. Whether you're a seasoned investor or a business looking to expand your footprint in Southeast and East Asia, this guide offers practical information and strategic considerations to navigate the complex legal, regulatory, and business environments of these three economies.

1

Investment Regulations in General

1.1. Indonesia

Indonesia's investment landscape presents a compelling opportunity for foreign investors, as shown by its robust economic growth and strategic position within Southeast Asia. As the 16th largest economy globally and the only G20 member in the region, Indonesia has maintained an impressive annual growth rate exceeding 5% over the past two decades, despite a temporary setback during the 2020 COVID-19 pandemic. The country offers two primary avenues for foreign direct investment: establishing a PMA Company (a limited liability company for foreign investment) or setting up a representative office. Indonesia's "positive investment list" has opened most business fields to 100% foreign ownership, reflecting the government's commitment to attracting international capital. The minimum investment requirement for most business fields generally exceeds IDR 10 billion (excluding land and buildings), which are intended to encourage substantial, long-term investments that can contribute significantly to its economic development. This framework, combined with Indonesia's large market and strategic location, positions the country as an attractive destination for foreign investors seeking growth opportunities in Southeast Asia.

1.2. Mainland China

China's investment regulations are designed to attract foreign capital while protecting national interests. The 2020 Foreign Investment Law ensures equal treatment for domestic and foreign investors, with the "Negative List" specifying sectors where foreign investment is restricted or prohibited. Most industries outside this list are open to full foreign ownership. China also categorizes sectors into encouraged, restricted, and prohibited, offering incentives like tax breaks for investments in encouraged industries. A National Security Review safeguards sensitive sectors from foreign control that could impact national security. Intellectual property rights (IPR) protections have been enhanced to meet international standards, addressing key investor concerns. Free Trade Zones (FTZs) offer more liberalized environments and additional incentives. While capital controls exist, profit and capital repatriation are allowed under regulated conditions. Overall, China's regulatory environment, supported by a vast market, makes it a compelling destination for foreign investment.

1.3. Hong Kong SAR

In general, there is no restriction on foreign investment and no foreign exchange control in Hong Kong SAR. The Hong Kong SAR's Companies Ordinance (HKCO), Securities and Futures Ordinance (HKSFO) and other related ordinances bolster its status as a global financial center, fostering investment and upholding the principles of a free market. The HKCO's and HKSFO’s adaptability and transparency establish a stable and reliable legal environment for all investors, both inbound and outbound. To drive economic restructuring and ensure sustainable development, the Hong Kong SAR government prioritizes key industries where Hong Kong SAR boasts competitive advantages including innovation and technology, healthcare, environmental protection, family office and financial sectors, etc. The laws in Hong Kong SAR serve to safeguard investors' rights and intellectual property, promoting fair competition between local and foreign investors without bias.

2

Visa and Living Permit Regulations

2.1. <u>Indonesia</u>

Indonesia's visa and living permit regulations for foreigners have undergone significant changes with the introduction of the golden visa program in 2023. While traditional work permits like the RPTKA and KITAS remain essential for foreign workers, the new golden visa initiative offers long-term residency options for high-net-worth individuals, investors, and global talents. This program, available in nine categories, includes options for individual and corporate investors, Indonesian diaspora, and retirees. For instance, individual investors establishing businesses in Indonesia can qualify for 5-year or 10-year visas by meeting specific investment thresholds and proving substantial business ownership outside Indonesia. Alternatively, those not establishing businesses can obtain similar visas through investments in government bonds, public company shares, or real estate. The golden visa program represents Indonesia's strategic move to attract significant foreign investment and expertise, offering a more flexible and long-term approach to residency compared to traditional work permits, while still maintaining stringent financial and investment requirements to ensure meaningful economic contributions from visa holders.

2.2. <u>Mainland China</u>

China's visa and residence permit regulations are designed to manage the entry, stay, and activities of foreign nationals. For short-term visits, foreigners typically apply for a visa that aligns with the purpose of their stay, such as a tourist (L) visa, business (M) visa, or work

(Z) visa. Work visas generally require an official employment license from the relevant Chinese authorities. In some cases, work visa holders need to apply for and obtain a residence permit within a specific timeframe after entering China, rather than directly converting the visa.Residence permits are essential for those planning to stay in China long-term. These permits are issued based on the individual's purpose in China, such as work, study, or family reunion, with a validity period ranging from a few months to several years, and they are typically renewable. The residence permit allows multiple entries into China during its validity period.Additionally, foreigners must register their residence with the local police within a specific timeframe (usually within 24 hours) after arrival, although the exact requirements may vary by city and region. Compliance with these regulations is crucial for a legal and smooth stay in China.

2.3. Hong Kong SAR

As a Special Administrative Region of China, Hong Kong SAR maintains a unique visa and immigration framework. Typically, individuals without the right of abode or right to land in Hong Kong must obtain a visa or entry permit to engage in activities such as working, studying, establishing or joining a business, residing, or extending their stay beyond the visa-free duration. In order to attract worldwide talents, Hong Kong SAR provides a variety of employment and investment visa choices, such as the General Employment Policy (GEP) visa, the Admission Scheme for Mainland Talents and Professionals (ASMTP) visa, and the Capital Investment Entrant Scheme (CIES) visa, catering to diverse needs and facilitating entry for individuals with different professional and investment backgrounds. Moreover, the Hong Kong SAR government has launched a wide myriad of initiatives such as the Quality Migrant Admission Scheme (QMAS) in 2006 to attract skilled individuals aiming for permanent residency in the vibrant region. From 2023 onwards, the removal of the annual quota for the QMAS application signifies the government’s more open and welcoming approach to enriching Hong Kong SAR’s dynamic workforce with a diverse pool of skilled individuals.

Belt and Road Initiative (BRI) and its benefits

3.1. Indonesia

The Belt and Road Initiative (BRI), launched by Chinese President Xi Jinping in 2013, has significantly impacted Indonesia-China relations and regional development. In Indonesia, BRI projects have built upon pre-existing economic collaborations, expanding into crucial infrastructure developments such as the Jakarta-Bandung High Speed Rail, which opened in October 2023. The initiative has fostered increased bilateral trade, with values rising from $50 billion in 2013 to $150 billion in 2022. China has also become Indonesia's second-largest foreign investor, with direct investments reaching $21.5 billion in 2022 across various sectors. Beyond economic ties, the BRI has strengthened people-to-people exchanges, evidenced by growing numbers of Chinese tourists and Indonesian students in China. As Indonesia continues to gain prominence as a regional power, its strategic importance in China's "Neighbourhood Diplomacy" policy underscores the mutual benefits of this partnership, promising continued cooperation and development under the BRI framework. The strengthening of these ties could very well lead to more investment opportunities in Indonesia not just for Chinese parties, but for those other regions also involved in the BRI.

3.2. Mainland China

From China's perspective, the BRI is a cornerstone of its foreign policy, designed to strengthen economic ties, promote regional stability, and create new markets for Chinese goods and services. By investing in roads, railways, ports, and other infrastructure projects, China facilitates smoother trade routes, reduces transportation costs, and fosters economic growth in participating countries. Additionally, the BRI helps to internationalize the RMB, with more than 50% of China's cross-border trade now settled in RMB in BRI countries. This expansion strengthens China's influence in global governance by creating alternative financial and trade networks that reduce dependency on Western-dominated systems. The initiative also opens up opportunities for Chinese companies to operate abroad, boosting their competitiveness and innovation. Overall, the BRI is seen as a mutually beneficial framework that advances China's economic interests while contributing to global development.

3.3. Hong Kong SAR

Hong Kong SAR stands to gain significantly from engaging in cross-border investments along the Belt and Road routes. As a leading international trade center with strong economic ties, the city can leverage its strategic geographical location and evolve into a pivotal "super-connector" linking China, other countries across the Belt and Road regions, and the rest of the world, especially connecting between China and South East Asia countries. Moreover, Hong Kong SAR's ideal position and the English and Chinese language ability of talents present an unprecedented opportunity to oversee cross-border investment initiatives and support Chinese firms in their global expansion endeavors through mergers and acquisitions, as well as legal and arbitration services. In addition to the existing Silk Road Fund, Hong Kong SAR stands poised to serve as a catalytic platform for a multitude of investment institutions to collaboratively establish funds. The proactive engagement not only diversifies the local investment landscape but also accentuates Hong Kong SAR's role in fostering global financial connectivity.

4

Cross-Border M&A in the Indonesia-China-Hong Kong triangle

4.1. Indonesia

In Indonesia, while cross-border M&A activities are gaining momentum, they are primarily focused on private deals and are subject to a regulatory framework that has evolved significantly since 2019. The country's legal system does not specifically address outbound acquisitions by Indonesian entities but provides a comprehensive framework for inbound foreign acquisitions. Key developments include the introduction of the Online Single Submission (OSS) system in 2018 and the OSS Risk-Based Licensing System in 2021, which have streamlined the licensing process for foreign investors. While no single regulatory body directly oversees M&A transactions, the Indonesian Competition Supervisory Commission (KPPU) plays a crucial supervisory role, with additional oversight from sector-specific authorities like the Financial Services Authority (OJK) for financial services. Recent regulatory changes, such as Government Regulation No 44 of 2021, have further refined the landscape, aiming to prevent monopolistic practices and unfair competition. These developments, coupled with the growing economic ties between Indonesia, China, and Hong Kong, create a dynamic environment for cross-border M&A activities, offering significant potential for strategic investors navigating this opportunity.

4.2. Mainland China

Cross-border mergers and acquisitions (M&A) within the Indonesia-China-Hong Kong triangle are a key aspect of China’s economic strategy in Southeast Asia. These M&A activities enable China to expand its corporate influence, secure vital resources, and access Indonesia’s growing markets. Hong Kong, as a global financial hub, plays an essential role, offering financial services and legal expertise that facilitate transactions between Chinese and Indonesian firms.Chinese companies see M&A in Indonesia as an opportunity to diversify investments, acquire strategic assets in sectors like energy and infrastructure, and leverage Indonesia’s natural resources and large consumer base. These activities also align with China's Belt and Road Initiative (BRI), fostering stronger economic ties and regional integration. The collaboration among China, Hong Kong, and Indonesia not only drives corporate growth but also supports China’s broader goal of increasing its influence in Southeast Asia.

4.3. Hong Kong SAR

The Chinese entities are seeking entry into the Hong Kong capital market to raise funds through M&A activities. Hong Kong SAR has advanced rules and procedures based on the well-established common law system, as well as skilled professionals well-versed in global business practices, to safeguard the rights and interests of all parties during the M&A process. That said, conducting comprehensive due diligence reviews is paramount in transactions to ensure that the target companies, properties, businesses and assets acquired meet the investor's expectations. This process is strictly enforced at every stage of the transaction to mitigate risks. Moreover, merging companies poses challenges especially when they showcase vastly different business models and cultures. The most cited issue of cross-border M&A is post-merger integration strategy, which necessitates inputs from various fields including strategy, new management, organization, business, finance and accounting, tax and law. The increasing number of listed firms in Hong Kong SAR that have recently transitioned to privatization suggests a positive trend in cross-border M&A activities in Hong Kong SAR. Furthermore, private equity and limited partnership fund are also popular in Hong Kong SAR for fundraising activities.

5

Digital Economy and Fintech Opportunities

5.1. Indonesia

The digital economy and fintech sectors in Indonesia have experienced significant growth, particularly accelerated by the COVID-19 pandemic. Key areas of expansion include e-money services, peer-to-peer lending, digital banking, and cryptocurrency trading applications. The regulatory landscape for fintech in Indonesia is primarily overseen by the Financial Services Authority (OJK) and the Central Bank of Indonesia (BI), with recent legislation like Law No. 4 of 2023 on Financial Sector Development and Reinforcement reshaping the supervisory framework. Various fintech business models are recognized and regulated, including securities brokers, crowdfunding platforms, payment service providers, P2P lending, digital banks, and aggregators. Foreign investment restrictions vary across these sectors, ranging from 49% to 99% maximum foreign ownership. While there are no specific incentive schemes for fintech investments, general tax incentives are available for businesses with a gross turnover of IDR 4.8 billion or less. The dynamic growth of Indonesia's fintech ecosystem, coupled with evolving regulations, presents both opportunities and challenges for investors and businesses in this rapidly developing market.

5.2. <u>Mainland China</u>

China's digital economy has experienced remarkable growth, further accelerated by recent global shifts and the increasing reliance on technology. Key areas of expansion include e-money services, peer-to-peer lending, digital banking, and blockchain applications. The regulatory landscape for fintech in China is primarily overseen by the People's Bank of China (PBOC) and the China Banking and Insurance Regulatory Commission (CBIRC), with recent regulations like the Data Security Law and Personal Information Protection Law reshaping the supervisory framework. Various fintech business models are recognized and regulated, including payment service providers, digital banks, P2P lending platforms, and blockchain-based applications. While foreign investment is encouraged, restrictions vary across sectors, with specific guidelines on ownership and operational requirements. Although there are no dedicated incentives for fintech investments, general support exists for innovation-driven businesses. The dynamic growth of China's fintech ecosystem, coupled with evolving regulations, presents substantial opportunities and challenges for both domestic and international investors in this rapidly advancing market.

5.3. <u>Hong Kong SAR</u>

As an international financial hub and a gateway to various jurisdictions, Hong Kong SAR stands out as a remarkable platform for the development and expansion of fintech initiatives. According to the Financial Services Branch of the Hong Kong SAR Government, around 1,000 fintech companies are operating in Hong Kong with broad coverage in mobile payment, artificial intelligent financial consultancy, regulatory technology, etc. The increasing emergence of artificial intelligence is generating increasing investor interest in Hong Kong SAR. The regulatory landscape for fintech in Hong Kong SAR is governed by a myriad of regulatory schemes including the Banking Ordinance and Payment Systems and

Stored Value Facilities Ordinance. Notably, the Securities and Futures Ordinance and Listing Rules of Hong Kong Stock Exchanges hold significant relevance, in regulating issuing, dealing and advising activities in securities. Hong Kong SAR is also committed to promoting the development of electronic payment. In December 2023, the Hong Kong Monetary Authority (HKMA) and the Bank of Thailand jointly launched FPS x PromptPay Link for cross-border payment between Hong Kong SAR and Thailand, aimed at supporting tourism by providing efficient and cost-effective means of retail payment solutions for visitors. Furthermore, the HKMA has implemented various measures to strengthen cybersecurity within the banking sector, including the introduction of an enhanced competency framework.

6

International and Investment Dispute Resolution

6.1. Indonesia

International and investment dispute resolution in Indonesia is governed by a comprehensive legal framework, primarily anchored in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This law, known as the Arbitration Act, serves as the Indonesian Lex Arbitri, defining arbitration as a mechanism for settling private disputes outside general tribunals. The Act limits arbitrable disputes to those of a commercial nature or concerning rights under the parties' control, excluding matters that cannot be settled amicably under prevailing regulations. For investment disputes specifically, Law Number 25 of 2007 on Investment provides multiple resolution pathways, including consensus, arbitration, alternative dispute resolution, domestic courts, and international arbitration when agreed upon by parties. Notably, the Arbitration Act grants exclusive jurisdiction to arbitration once parties have agreed to it, barring courts from intervening in such cases. This framework applies to both domestic and international commercial disputes. However, not all disputes with foreign investment companies (PMA) automatically default to international arbitration forums, especially if the parties involved haven't explicitly agreed on choice of law and forum in their contracts, as Indonesia has several domestic arbitration forums including Badan Arbitrase Nasional Indonesia (BANI) which would be a possible alternative forum for the dispute.

6.2. Mainland China

International and investment dispute resolution in China is governed by a robust legal framework that combines domestic laws with international treaties, emphasizing China's commitment to a stable investment environment. Key legal instruments include the Arbitration Law of 1994 and the Civil Procedure Law, which prioritize arbitration as a preferred dispute resolution method. The China International Economic and Trade Arbitration Commission (CIETAC) is a leading institution, providing a platform for resolving commercial disputes with foreign parties. Additionally, China's adherence to the New York Convention enhances the enforceability of arbitral awards, offering greater security to foreign investors. Chinese courts have increasingly recognized and enforced foreign arbitral awards, reflecting a supportive stance towards international arbitration. This evolving approach ensures a fair and efficient dispute resolution process, encouraging foreign investment and strengthening economic cooperation. China's dispute resolution framework is thus geared toward providing a reliable mechanism for international and investment-related conflicts.

6.3. Hong Kong SAR

Hong Kong SAR's dispute resolution framework is distinguished by its arbitration and mediation services that attract global acclaim. The well-established legal system is firmly based on its commitment to party autonomy, non-interference, and neutrality, safeguarding the integrity of the arbitral process and fostering trust among international investors and businesses. Adhering to the UNCITRAL Model Law and its pro-arbitration stance, Hong Kong SAR offers a legal environment conducive to both domestic and international arbitration. Also, the city benefits from the application of the New York Convention, enabling the enforceability of Hong Kong SAR's arbitral awards in over 150 Contracting States. One of Hong Kong SAR's key strengths lies in its robust enforcement mechanisms, exemplified by its status as a preferred arbitration seat globally and its arrangements with Mainland China for the reciprocal recognition and enforcement of arbitral awards and judgments. Moreover, Hong Kong SAR's strategic location, coupled with the stellar reputation of institutions like the Hong Kong International Arbitration Centre (HKIAC), positions the city as a hub for legal and dispute resolution services in the Asia-Pacific region. Hong Kong SAR also has the Hong Kong Mediation Centre (HKMC) to promote the development of mediation through its diverse services, aiming to create a harmonious community.

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