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Trade successfully with Indonesia

Ten important principles

10 rules that can help make your sales to Indonesian buyers successful

> For the forward thinking exporter, this is a market worth pursuing

To call Indonesia 'a country' seems like an understatement. It consists of over 17,000 islands, spans three time zones and covers an area of 8 million square kilometres – 80% of which is sea. Around 6,000 islands are inhabited, leading to a multiplicity of cultural influences. This fascinating mix is encapsulated in the country's national motto 'Bhinneka Tunggal Ika' – 'Unity in diversity'.

Indonesia has one of the world's fastest developing economies, with a burgeoning consumer market driving its economic expansion. Its growing middle class is eager for foreign goods and services, while its government is focused on vital infrastructure development. As a result, Indonesia offers a wealth of business opportunities – provided that potential suppliers approach this promising market in the right way.

That's why this report has been produced, because Indonesia, for all its opportunities, is by no means the easiest country to do business with. While some barriers to trade have been reduced by deregulation, foreign exporters can still face complex time-consuming bureaucracy. But for the forward thinking exporter, this is a market worth pursuing. It has demonstrated solid growth over recent years: a trend that is set to continue. Already the largest economy in Southeast Asia, over the next decade it is expected to figure in the world's top ten.

1. Choose your local agent or distributor carefully.

Foreign companies wishing to sell their products or services in Indonesia may find it useful to appoint a local agent or distributor. Such an arrangement must be registered with the Ministry of Trade (MOT), which makes a clear distinction between agents and distributors. An agent is an intermediary of the foreign principal, while a distributor acts for itself in marketing and selling the principal's goods and services. The agency/distributorship agreement, notarised by a notary public, and a statement letter from the Attache of Trade at the Indonesian Mission in the principal's country of origin, are among the documents that must be submitted to the MOT.

In the event of an early termination of a sole agency distributorship, the new agent/distributor may be registered with the MOT only after obtaining a 'clean break letter' from the previous sole agent/distributor. For that reason, care should be taken in choosing an agent that is suitable for your industry, so it is advisable to do a thorough background check on your chosen agent/distributor's previous track record.

If you do appoint an agent, they can of course be of great help in navigating Indonesia's cultural and legal complexities. You may want to extend your representation further by establishing an office in Indonesia.

To do so you will need to obtain a business permit from the appropriate government agency. In some cases, several of these agencies may be involved.

For instance, various types of local presence are available to foreign companies:

- A Foreign Trade Company Representative Office, approved by the Ministry of Trade (an MOT RO) is relatively simple to set up and can undertake specific activities on behalf of the foreign exporter, such as acting as an intermediary, handling promotional activity and market research. However, it can't undertake operational activities such as accepting offers, signing contracts and distribution.

• A Foreign Company Representative Office from the Investment Coordinating Board – the Badan Koordinasi Penanaman Modal (a BKPM RO) can manage a foreign company's interests and assist in establishing and developing its business in Indonesia. The activities of a BKPM RO are limited to the role of supervisor, intermediary, coordinator or manager of the foreign company's interests but it may not participate in managing the foreign company or its branches in Indonesia or generate revenue from Indonesia, nor can it engage in agreements or transactions relating to the sale and/or purchase of goods and services in Indonesia.

• Other types of representative office can be established: some associated with particular trade sectors, such as a Foreign Company Construction Service Provider Representative Office from the Ministry of Public Works (MPW RO).

You can go further by establishing an Indonesian legal entity, the most common of which is a penanaman modal asing (PMA) company: a limited liability company subject to both Indonesian Foreign Investment Law and Indonesian Company Law. As a rule, all business sectors are open to foreign investment and foreign investors may conduct business through a 100% foreign-owned PMA company without a local Indonesian partner, unless stated otherwise in the Presidential Regulation No. 36 of 2010 - the Negative List of Foreign Investment. A 100% foreign-owned PMA company is obliged to sell shares to Indonesian investors within 15 years of its inception.

Each of these arrangements has its benefits, so seek independent advice on which would suit your business best.

2. Adapt your business model to suit the market.

Competition for Indonesian business is strong, with companies from many other Asian nations vying for the Indonesian Rupiah.

Study consumer preferences and competitive practices and seek advice from your appointed agent. While Indonesian consumers are price sensitive, there is also a perception that foreign goods are of a superior quality.

Your pricing strategy should take into account warehousing, delivery and distribution, and after-sales service. Also, bear in mind that, although Indonesia's middle class is growing fast, average incomes in Indonesia are considerably lower than in more mature markets.

Indonesia's distribution system is complex and its poor infrastructure is something you'll need to take into consideration when planning to enter the market: while it is certainly one of the fastest growing economies in Southeast Asia, its infrastructure is still one of the worst. The government has announced its intention to invest more in infrastructural improvements, which is good news for foreign companies that can offer related services. However, until there is substantial improvement, those who simply want to distribute their goods within this vast country should factor this potential problem into their plans. Seeking a suitable distribution partner in Indonesia can ease the burden, especially as many of those distributors can also assist with issues such as importation and customs clearance.

3. Make a name for yourself.

Brand recognition and loyalty are highly valued in Indonesia. Direct mail marketing is common there, for many types of product and service. Advertising in local media can be effective in those areas of concentrated purchasing power like Jakarta and West Java. Television advertising will give national cover, reaching most consumers.

But tread carefully with your advertising. Indonesia is steeped in religion and tradition, and many of its people can be sensitive to the graphic elements of advertising that would be more acceptable in other countries. Take this into consideration and arrange for your advertising to be reviewed by native Indonesians beforehand: perhaps focus groups who can give you feedback before launching an advertising campaign there.

As well as giving your brand and products a high profile, make sure that your local representatives can provide strong sales and after-sales support. Indonesians' brand loyalty can be established and maintained only if they can rely on fast and efficient local service.

4. Protect your intellectual property

Since the mid 1990s, Indonesia's efforts to combat intellectual property theft have made some progress. It has reformed its laws to bring them in line with the World Trade Organisations Trade-Related Intellectual Property Rights (TRIPS) agreement, which requires WTO members' legal systems to encompass a stipulated standard of IP protection.

However, the 2012 edition of the US Trade Representative's annual Special 301 report still named Indonesia on its priority watch list. While praising Indonesia's progress on intellectual property protection, with rights holders reporting good cooperation from the enforcement authorities, the report urged Indonesia to further its efforts to counter piracy and counterfeiting. All the more reason for foreign exporters to take every measure available to protect their intellectual property.

In Indonesia, intellectual property rights can be registered for patents, trade marks, designs and copyright. This is essential, as registration in your own country won't protect your rights in Indonesia.

There are two forms of patent protection: normal patents, which have a 20 year lifespan, and simple patents, i.e if there is less inventiveness involved in the product, which have a 10 year lifespan.

Trade mark registration is on a 'first-to-file' basis, meaning that the first person to file an application will usually have priority over the use of that trade mark in Indonesia. That can cause problems as there is no requirements for owners of registered trademarks in Indonesia to prove that they are using their trademarks when registering or renewing them. Sometimes the system is abused as a way of blocking well known foreign trademarks from filing for registration in Indonesia. Therefore, it is advisable to apply for trademark registration before you begin to market your products in Indonesia and to make vigorous efforts to seek trademark protection in the country. To its credit, Indonesia has introduced stricter penalties for trade mark infringement.

Protection of industrial designs lasts for 10 years. Copyright arises automatically once the product is created in a tangible form. While registration (with the General Register of Works at the Director General of Intellectual Property Rights of the Ministry of Law & Human Rights) is not mandatory, it is advisable, as production of the registration letter can be used as legal evidence in court if a dispute arises.

> "Apply for trademark registration before you begin to market your products in Indonesia"

5. Don't forget to factor in import tariffs…

Some products, such as raw materials for pharmaceuticals and machinery related to the print industry, are free of import tariffs, while others have risen markedly: especially on luxury goods and those that may compete with locally produced goods like electronic goods and a range of agricultural products, coffee and tea. Most Indonesian tariffs are bound at 40%.

Indonesia has preferential trade relationships with several other countries. Import duties from the ASEAN countries (The Association of Southeast Asian Nations) can in general range from 0% to 5%, except for products in the exclusion list.

Indonesia also has a number of Free Trade Zones (Kawasan Perdagangan Bebas/KPB) which are exempt from import duty and excise and various import taxes such as VAT. When supplying to these zones, suppliers should seek to share in the benefits that they offer to importers.

6 …and abide by import regulations.

These are quite extensive. You or your agent must provide pro-forma invoice, commercial invoice, certificate of origin, bill of lading, packing list and insurance certificate. In addition, certificates may also be required to ensure the required standard of products like food or pharmaceuticals. The importer must also notify Indonesian Customs before arrival of goods and submit import documentation electronically. All imported goods must meet Indonesian labelling regulations in the Indonesian language or Bahasa Indonesia.

Also, bear in mind that, even when goods are imported to a Free Trade Zone, customs audit and penalties still apply.

7. When in Rome (and Jakarta)…

Understanding your customer's business culture is vital, wherever you intend to trade. In Indonesia, as in many other Southeast Asian countries, businesses are very hierarchical - so entering the meeting room in order of rank will set the right impression. On the other hand, the room may be empty because, although you'll be expected to be punctual for business meetings, your Indonesian host may not be! Always greet your host's party with a handshake using your right hand and the words 'Selamat Pagi' (good morning), 'Selamat Siang' (good day) or 'Selamat Malam' (good evening).

As elsewhere in Asia, business cards should be presented with care, again using the right hand, and received with respect. Because rank is important, ensure that yours is shown clearly on your business card.

At your first business meeting, don't be surprised if little actual business gets done. There are two reasons. Firstly, relationship building is essential and so that first meeting is just to get to know each other. And secondly, decisions aren't taken quickly in Indonesia: your opposite number will not want to give the impression that your proposal has not been given full consideration. That means that patience is needed – negotiations can be frustratingly prolonged. Even insisting on a written contract may be seen as questioning your customer's trust, although they will understand that for you it's necessary. But present it as if it's a guideline rather than a statement of obligations.

Because of Indonesians' innate wish to maintain harmony, their response to your proposal may be indirect: there are many words in Bahasa Indonesia that appear to say 'Yes' but actually mean 'No'. Because the nuances of the language are quite subtle, it would be advisable to have a fluent Bahasa Indonesia speaker on your meeting team.

"Relationship building is essential"

8. Resolve any disputes over payment efficiently.

Indonesian contract law is based on the principles of 'freedom of contract'. While there is no restriction on the parties electing a foreign governing law and foreign courts as the dispute resolution mechanism, a foreign court decision cannot be enforced in Indonesia as Indonesia is not a party to any international convention for the recognition and enforcement of foreign court judgements.

If the Indonesian party has assets outside Indonesia, you may consider using foreign law and courts as the dispute resolution mechanism. If a foreign party were to seek the performance of an Indonesian party (in Indonesia) under a foreign court judgement, it would have to file a new lawsuit in Indonesia at the relevant Indonesian District Court and the foreign court judgement would then serve as evidence in the new case. The Indonesian judge presiding over the case would have the discretion, but not the obligation, to evaluate such a foreign court judgement.

It is also worth noting that Indonesia's legal system, which is based on civil law and in which judges are not bound by precedents, can be slow moving. Moreover, usually Indonesian courts do not award costs in litigation cases, and therefore each party is responsible for its own legal costs.

There are alternatives to court proceedings, when a dispute arises over payment for goods and services. Indeed, a central feature of Indonesia's legal system is the national ideology of Pancasila, which calls for consensus rather than confrontation. Thus, before a case goes to court, a judge must be satisfied that the parties have at least tried to resolve their dispute through some form of third party arbitration or mediation.

Mediation must be undertaken by professional/licensed mediators under the supervision of the court. The aim is to reach an amicable settlement and disputes that are mediated are often resolved quickly – but mediation does rely on a willingness by both parties to reach a settlement.

Arbitration has more force than mediation – although the process can take longer and be more expensive - and has the advantage over court proceedings that the parties to the dispute have more say in the procedure and even in the choice of arbitrator. What's more, while a court decision is open to appeal, an arbitration award is final and binding.

Indonesia is a party to, and has ratified, the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The existence of a valid arbitration agreement precludes the right of the parties to submit a dispute to the Indonesian courts. Enforcement of the arbitral award must be made by way of an application to the competent district court and, in the event of enforcement of an international arbitration award, to the district court of Central Jakarta.

However, in some cases court proceedings still continue after the arbitration decision has been awarded.

9. Don't lose a valuable customer over a single late payment.

Customers are hard to come by and even more so in new markets. So, once you've invested resources in winning a contract, you'll want your new customer to become a regular customer. If any payment problems do arise, an amicable settlement is therefore far more advisable than heavy handed recovery action. Atradius Collections can help.

Don't assume that, if you have a retention of title clause in your sales contract, this will be acknowledged by an Indonesian court. Court action in Indonesia can be biased towads the debtor, expensive and drawn out, with no guarantee of success. Atradius Collections specialises in amicable out of court settlements wherever possible on behalf of their clients and will stay in close contact with the debtor, using proven negotiation and persuasion techniques to convince them to settle the debt: effectively helping both parties to the sales contract. Atradius Collections' most valuable asset is its understanding of Indonesian business culture and practices.

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10. Be competitive – but protect your sales.

While you may choose some form of payment security within your conditions of sale, such as Irrevocable Letter of Credit, remember that you are up against competition from other suppliers. So offering open account terms and an attractive credit period will put you at an advantage. But that will leave open the risk of not getting paid – unless you're credit insured.

Atradius provides protection for business-to-business open account sales to Indonesian companies. What's more, in doing we will assess the creditworthiness of your prospective customer in Indonesia – something that you may find hard to do yourself because of the difficulty of obtaining financial information on companies there.

Our underwriters are expert in 'reading between the lines' of company accounts and often visit the company they are assessing to verify the information they've obtained. They give particular attention to the riskier trade sectors like shipping, which is highly capital intensive; electronics, where many of the smaller distribution companies have poor liquidity; and metals, which can be vulnerable to volatile global market prices.

"Expert in 'reading between the lines' of company accounts"

Many opportunities for profitable trade

Having experienced political turmoil in the late 1990s, Indonesia has now achieved stability as the world's third largest democracy after India and the USA. In recent years, the country has seen economic growth of around 6% a year, driven largely by the rise in consumer spending by its expanding middle class and government investment in improving the infrastructure. This trend seems set to continue, with some forecasters predicting growth in household disposable income and expenditure of around 40% between now and 2020. The government of President Yudhoyono continues to take steps to liberalise foreign trade along WTO lines, although bureaucracy and corruption are still issues. Overall, provided that foreign exporters understand the characteristics of the markets and take suitable precautions to safeguard their sales, Indonesia promises many opportunities for profitable trade.

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