

Establishing Commercial Trusts in Indonesia: Legal Framework

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Trusts are a legal arrangement where a trustee holds and manages assets for the benefit of another (the beneficiary), as arranged by a settlor (the asset owner). As a civil law jurisdiction, Indonesia did not recognize the concept of trusts or the split between legal and beneficial ownership of assets (as seen in common law jurisdictions such as Singapore, the US and Australia). However, in January 2023, Law No. 4 of 2023 on Development and Strengthening of the Financial Sector (the “**P2SK Law**”) was enacted. The new law provides the mechanism that allows a settlor to create arrangements akin to commercial trusts as part of efforts to deepen financial markets and retain wealth onshore. We outline below the legal framework under P2SK Law, the process and timeline to establish a trust in Indonesia, as well as the regulatory and tax considerations of such trust arrangements.

Trust arrangements regulated under the P2SK Law

Under Article 34 of the P2SK Law, there are two arrangements akin to a trust that can be established by companies:

1. Special Purpose Vehicles (SPVs) for securitization; and
2. Trust Fund Managers (Trustees) for trust arrangements.

Under these arrangements, assets are placed under the management of a trustee based on a written trust agreement for the benefit of designated beneficiaries. Key features include:

No.	Features	Description
1.	Licensed Trustee	<p>A trust must be managed by a licensed trustee. The financial services authority (Otoritas Jasa Keuangan (“OJK”)), is empowered to license and supervise trustees. A trustee can be either a legal entity or an individual (if approved by OJK).</p> <p>In practice, we expect corporations, banks, trust companies, or other financial institutions will serve as trustees.</p>
2.	Separation of Assets	Assets transferred into the trust are held separately from the trustee’s own assets. The trustee holds legal title to the trust property as the registered owner for the benefit of the beneficiary and must record and report those assets off the trustee’s balance sheet.
3.	Bankruptcy Protection	If the trustee becomes bankrupt, the trust assets are not part of the bankruptcy estate. Similarly, if the settlor (the original asset owner) goes bankrupt, those assets are not part of the settlor’s estate. This asset protection feature ensures that trust assets are protected from claims against the trustee or settlor.
4.	Expanded Scope of Assets	The P2SK Law places no explicit limitation on the types of assets that can be placed into an Indonesian trust. This opens the door for a wide range of assets (including (without limitation) cash, securities, real estate, and shares in companies) to be managed in a trust, subject to any future implementing regulations.

No.	Features	Description
5.	Confidentiality	Trustees are required to maintain confidentiality regarding the settlor's and beneficiaries' data and transactions. This aligns with global trust practices and provides comfort that sensitive financial arrangements will not be publicly disclosed, except as required by law (e.g. for anti-money laundering checks).

Although these features resemble a common law trust seen in neighbouring common law countries, it is important to note that these arrangements are nuanced. If you require a comparison between the trusts arrangements in Indonesia and common law jurisdictions (such as Singapore, the US, the UK or Australia), please let us know.

Steps that companies must take to establish a commercial trust under the P2SK Law

While the process for establishing a trust will be confirmed by implementing regulations, we expect the general steps to establish a trust under the P2SK Law are as follows:

No.	Steps	Description	Expected timeframe
1.	Appointing a Licensed Trustee	Given the requirement for OJK licensing under the P2SK Law, it is essential for a trustee licensed by OJK to be appointed to superintend and manage the trust assets.	1-3 business days
2.	Drafting a Trust Agreement	<p>The settlor (i.e. the party establishing the trust) and the trustee will enter into a written trust agreement. This document outlines the terms of the trust, including (without limitation):</p> <ul style="list-style-type: none"> a. the assets being placed into trust; b. the identity of the beneficiaries; c. trustee powers and duties; d. the purpose the trustee should manage the assets; e. relevant fees; f. duration of the trust; and g. other terms tailored for the specific circumstances of the settor. <p>The agreement should be in writing and for enforceability, it should be clear and comprehensive. To ensure any trust documents meet all requirements of the P2SK Law, any implementing regulations and any rules enacted by OJK, it is imperative for settlors to obtain legal advice and assistance in the drafting of such documents.</p>	1-2 weeks (subject to (i) the conditions of the settlor; and (ii) the intended specifications of the trust arrangement)
3.	Transfer of Fund Assets	<p>Once the trust deed is signed, the settlor will transfer the specified fund assets to the trustee. The trustee is registered as the legal owner of the assets (for the benefit of the beneficiary/beneficiaries).</p> <p>Depending on the asset type, additional documentation may be required – for instance, changing title of real property to the trustee's name (with an indication it is held in trust) or moving funds into a segregated trust account. It is important that the transfer of title is properly recorded to ensure the separation of the trust assets.</p>	2-4 weeks (subject to (i) the asset; (ii) the conditions of the settlor; and (iii) the intended specifications of the trust arrangement)
4.	<p>Registration or Notification</p> <p>*(if required, subject to implementing regulations)</p>	<p>We anticipate that OJK may require registration or notification when a new trust arrangement is established, especially if large assets are involved or if the trust is of a commercial nature. We suspect there may also be other regulatory considerations and requirements that must be noted, for instance Anti-Money Laundering requirements to ensure the legality of trust assets.</p> <p>At this stage, as the regulatory framework is being developed, settlors should consult with OJK or legal advisors to clarify the exact steps for compliance.</p>	To be confirmed (upon issuance of any further implementing regulations)

No.	Steps	Description	Expected timeframe
5.	Ongoing management and compliance	<p>The trustee will manage the assets according to the trust agreement. This may involve investing the assets, safekeeping them, and eventually distributing income or principal to the beneficiaries as instructed.</p> <p>The trustee must also keep records and report trust assets separately from its own and maintain confidentiality. Regular statements or reports to the settlor or beneficiaries might be provided as agreed.</p>	Ongoing obligations

While the time required to set up a trust in Indonesia can vary due to licensing and asset transfer considerations, we expect that a commercial trust could potentially be set up within 4–8 weeks. However, more complex and/or bespoke trusts might take longer as parties navigate new regulatory expectations. As the new trust arrangement framework matures, we anticipate the process will become more streamlined.

Clients/settlors are encouraged to start planning early and consult with legal, financial and tax advisors to ensure a smooth establishment process. We recommend for clients to consider relevant regulatory and tax considerations applicable to trusts in Indonesia.

Regulatory Considerations

According to the P2SK Law, trusts fall under the supervision of OJK. Any entity or person offering trust management services must be licensed by OJK, which entails meeting fit-and-proper criteria, capital requirements, and ongoing compliance obligations. This regulatory framework is intended to ensure trustees are capable and trustworthy.

For clients, this means when you engage a licensed trustee, the trustee is responsible and accountable to regulators. OJK has the authority to sanction or even revoke the license of a trustee that violates regulations or jeopardizes clients' assets. In extreme cases, only OJK can file for the bankruptcy of a trustee or SPV, preventing malicious or premature bankruptcy claims – a protective measure for the stability of these structures.

We expect that trustees may likely be required to adhere to anti-money laundering (AML) and counter-terrorism financing rules just like financial institutions. Since trusts can obscure the link between the asset owner and beneficiary, regulators will require robust customer due diligence. Documentation on the source of funds and identities of all parties when setting up a trust may likely be a regulatory requirement for a trust. OJK has indicated it will enhance disclosure and governance around trusts to improve transparency in the financial market.

Another regulatory aspect is that a trust might intersect with other laws – for instance, if the trust holds shares in an Indonesian company, corporate law and sectoral laws (like banking or mining laws) still apply to those shares. The trustee as shareholder must exercise voting or ownership rights in compliance with such legislation. In some cases, if the trust arrangement effectively changes control of a company (with a trustee holding shares on behalf of someone), disclosures might be needed to authorities or business partners. These are situational considerations to discuss with legal advisors when structuring the trust.

Tax Considerations

As of July 2025, there are no specific tax regulation that deals explicitly with trusts. The P2SK Law mandated that the government regulate the tax aspects of SPVs and trusts within two years. We anticipate a government regulation or Ministry of Finance regulation will clarify points such as:

1. whether transferring assets into a trust is a taxable event;
2. who is liable for income generated by trust assets; and
3. how distributions to beneficiaries are taxed.

While awaiting guidance from the tax authorities, we outline below a number of reasonable expectations based on general principles and government indications:

1. Income from Trust Assets

Income earned on assets (interest, dividends, rent, etc.) will likely be taxed at the trust level or passed through to beneficiaries. There may be two potential tax treatments:

- a. the trustee may be taxed as a separate taxpayer (similar to a company paying tax on income); or
- b. the trust may be treated as a transparent, taxing the beneficiary or settlor on the income.

Given the concern to prevent tax avoidance, the Indonesian tax office may decide to tax trusts in a way that ensures the income does not escape taxation. In practice, this could mean the trustee must withhold tax on distributions to beneficiaries, or the settlor must report trust income on their own tax return if they retain some control.

2. Beneficiary Taxation

If beneficiaries receive distributions from the trust, current general tax law would treat such distributions as taxable income. If the trust is used for estate planning (e.g., you inherit assets via a trust upon someone's death), those distributions might be treated akin to inheritance (and thus not taxed). However, if the trust is distributing investment income regularly to a beneficiary, such receipts could be taxed as ordinary income in the beneficiary's hands (at progressive rates up to 35%). It will be important to see if the new regulations carve out any special treatment for trust distributions, especially to prevent double taxation (once at trust level, once at beneficiary level).

3. Transfer of Assets

Subject to the specific assets and circumstances of the transfer, the settlor is essentially just repositioning assets for management (not actually selling them), we expect no capital gains tax on that transfer. However, if assets like land or shares are re-registered, there might be administrative fees or duties (like the BPHTB tax on land title transfer) unless exemptions are provided.

4. Trustee and Beneficiary Residency

Another aspect to consider is cross-border situations where an Indonesian trust has foreign beneficiaries, or vice versa, an Indonesian beneficiary of an offshore trust. If a non-resident beneficiary receives income from an Indonesian trust, Indonesian withholding tax may apply, similar to withholding on dividends to foreign shareholders (unless a tax treaty provides relief or exemptions). Conversely, Indonesian tax residents are taxed on worldwide income, so being a beneficiary of a foreign trust doesn't avoid Indonesian tax obligations. The specifics of these tax considerations will need to be addressed in the upcoming regulations.

Next Steps

There are many practical details and regulatory and tax considerations that are left to further guidance from relevant authorities. The P2SK Law mandates that a government regulation be issued within two years (by early 2025) to further regulate the operation of SPVs and Trustees, including their tax treatment. OJK is also expected to release detailed rules on who can be a trustee, how to obtain a trustee license, what types of trust arrangements are allowed, reporting requirements, etc. In light of these upcoming implementing regulations, directions and rules, companies and individuals can anticipate clearer technical guidelines soon, as authorities are actively working on these regulations.

Provided that companies and individuals proceed with informed advice, an Indonesian trust can be a valuable component of a corporate structure or personal wealth plan. Not only do trust arrangements help achieve business and financial objectives (including asset protection, investment, or succession), but it also signals confidence in Indonesia's financial sector reforms.

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The article above was prepared by Dentons HPRP's lawyers

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