



## INVESTMENT IN INDONESIA

### A. ESTABLISHING A FOREIGN INVESTMENT COMPANY

Investment in Indonesia is regulated mainly by New Investment Law No.25 of 2007 (April 26, 2007) (“Law 25/07”).<sup>1</sup> Law 25/07 integrates the previous investment laws and its implementing regulations to some extent, but deals with some of the bottlenecks frequently cited by foreign investors doing business in the country. Important changes include those relating to investment approval procedures, land titles, and incentives.

Law 25/07 introduces new issues such as Corporate Social Responsibility and Dispute Settlement mechanism. Law 25/07 also introduces *one door-integrated services* pursuant to licensing process. The process runs from the application stage until the issuance of documents of all necessary documents, everything can now be done.

Moreover, Law 25/07 gives regencies and cities the right, authority and obligation to regulate and self-manage investment approvals taking into account the interests of the local communities.

Law 25/07 also offers equal treatment of every investor by bureaucracy reform in investment services and fiscal incentives. It shows the efforts of the government to make the investment climate more transparent.

#### **The limitation on Foreign Ownership**

The foreign investors may be a corporate entity or an individual. In some sectors, the investors can own all shares of a foreign investment company (“PT Penanaman Modal or PT PMA”) with certain exceptions. However, the said PT PMA must divest a portion of shares to an Indonesian party within 15 years after commencing commercial operations. On the other hand, the foreign investor can establish a joint venture with Indonesian parties. The Indonesian parties at least own 5% at the time of establishment. In that case, the foreign company is not required to divest its shares to Indonesian parties within 15 years.

The foreign investors also must check the Negative List for the minimum percentage that can be held by foreigners in a company in certain sector in Indonesia.

#### **Getting an Investment Approved**

The Capital Investment Coordinating Board (“BKPM”) is the central authorized body receiving, reviewing and approving investment capital applications as well as monitoring approved projects.

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<sup>1</sup> The Law 25/07 supersedes both Law No.1 of 1967 regarding *Foreign Investment* (January 10, 2007) and Law No.6 of 1968 regarding *Domestic Investment* (July 3, 1968).



The Foreign investors must submit an application form, so-called Model I, to BKPM. Various attachments must be submitted together with Model I including (a) a copy of the investors' Articles of Association (or passport/identification card in the case of individuals), (b) flowchart of the production process or description of services, (c) power of attorney if the application is not signed and submitted by the investors themselves.

After obtaining BKPM approval, the applicant can establish a limited liability company by executing a Deed of Establishment ("DoE") in the notary public. Then, this DoE shall be submitted to the Ministry of Laws and Human Rights ("MoLHR") for approval. One of the requirements to obtain MoLHR approval that the investors must submit a proof that they have paid the issued capital.

The Company also has the obligation to register in the Company Registry maintained by Department of Trade. Moreover, the Company must apply the Letter of Domicile to Sub District ("Kelurahan").

The Company must obtain a Taxpayer Registration Number (NPWP) and a taxable Entrepreneur Number (NPPKP) from the relevant tax office.

After the Company has been established, the Company must proceed immediately to take the following post formation steps:

### **CORPORATE HOUSEKEEPING**

After the DoE has been approved by MoLHR, the PT PMA must take several corporate actions.

A first meeting of Shareholders, Directors and Commissioners must be held. The General Meeting of Shareholders ("GMS") should confirm the appointment of the members of the Board of Commissioners ("BoC") and the Board of Directors ("BoD"). The GMS together with BoD and BoC ratify all actions taken in PT PMA's name prior to MoLHR approval of the DoE. Moreover, the Share Certificates, the Share Registry and the Special Register shall be prepared too.

After obtaining a BKPM Approval, PT PMA has the obligation to submit a report of Capital Investment Activities ("*Laporan Kegiatan Penanaman Modal*" or LKPM) to BKPM. PT PMA that has not yet obtained a Permanent Business License ("IUT"), shall submit a Semi Annual Report of LKPM to BKPM. PT PMA that has obtained IUT must submit an Annual LKPM. This report is in the standard form of BKPM. Furthermore, the copies of LKPM also must be delivered to the relevant government institutions, such as Department of Trade, Bank Indonesia or the Regional Office of the relevant technical department.



The Initial Investment Approval serves as a temporary operating license until PT PMA reaches the stage of commercial production. At that time, PT PMA shall apply for an IUT (“Permanent Business License”) to BKPM. Upon issuance of the IUT, PT PMA is authorized to conduct its activities for 30 years period.

### **EMPLOYING PEOPLE**

PT PMA must apply for An Expatriate Manpower Utilization Plan (“RPTKA or Rencana Penggunaan Tenaga Kerja Asing”) from the Department of Manpower (“DoM”) in order to employ expatriates. The RPTKA serves as basis for the expatriate to obtain their temporary stay permits (“KITAS”) and work permit (“IKTA”). DoM is required PT PMA who employs one expatriate must employ 3 local employees. So the percentage is 1:3 for expatriate : locals.

For a company with more than 10 employees, the Company must prepare the Company Regulations and registered with the Department of Manpower. If the Company has labor union, then the Collective Labor Agreement is required to be registered in Department of Manpower.

Moreover, Indonesia law recognizes both indefinite-term employment agreement and definite-term employment agreement. Before the Company hires the employees, the Company shall consider the advantages and disadvantages these types of agreements.

### **IMPORTING GOODS**

PT PMA wishes to import capital goods/raw materials is required to have a Limited Importer License Number (“Angka Pengenal Import Terbatas or APIT”). The APIT is obtained through BKPM. Goods imported under an APIT are subject to a reduced withholding tax of 2.5% compared to the normal rate of 7.5%. This tax is a prepayment of income tax and is fully creditable. Under some conditions, an exemption from this tax is possible.

PT PMA may obtain favorable import duty reductions on imported production equipment, spare parts and raw materials that are not locally available. PT PMA must submit Master List application to BKPM or the Customs and Excise Office (in certain circumstances). After the Master List is approved, then PT PMA receives an import duty reduction on the item listed in the letter to a maximum 5% duty rate.