

FOREIGN INVESTMENT IN INDONESIA

This memorandum sets forth a summary of the current procedures involved for the establishment of a Foreign Investment Company (known as a Perusahaan Terbatas Penanaman Modal Asing - "PMA Company") in Indonesia, and several related matters.

A. General Information

A.1. The Investment Board

The Investment Board (Badan Penanaman Modal or shortly known as "BPM") is assigned to assist Indonesian Government in handling the foreign / domestic investment matters in Indonesia. In general, BPM among others has the following functions:

- a. To formulate investment policies and convey them to the President of the Republic of Indonesia for approval.
- b. To coordinate investment planning, both sectoral and regional, and synchronizing the said planning into an integrated plan in the framework of Law No. 1 Year 1967 and Law No. 6 Year 1968 and in the framework of the regulation beyond the law on investments.
- c. To draw up periodically a list of business sectors for investment as a guideline for the development on investment sectors with account being taken of the opinions and materials conveyed by relevant ministries/government agencies and Regional Investment Board.
- d. To present the said list of business sectors for investment referred to in (c) to the President in order that they may be stipulated in a presidential decree.
- e. To gear the spread of the said investment activities in regions in conformity with the policies on development.
- f. To carry out assessment and development activities in the framework of providing the broadest information on investment projects.
- g. To establish communications and carry out promotions with and provide information to investors in particular and the business community in general.
- h. To evaluate applications for investments in accordance with the prevailing policies and stipulations on investments.
- i. To issue on behalf of the minister fostering the business sectors for investment concerned in the framework of the enforcement of Law No. 1 Year 1967 and Law No. 6 Year 1968, licenses and implementation decisions on investments in accordance with the delegation of authority from the Minister concerned.
- j. To undertake fostering and counseling and provide guidelines on problem solving in order that the implementation of investment projects may run smoothly.

- k. To undertake supervision over implementation of investment projects already approved by the government in cooperation with Regional Investment Board and relevant ministries/government institutes so that it shall be in with prevailing licensing and laws and impose sanctions in the case of deviations.

A.2. Foreign Investment Guideline

The Indonesian Government periodically issues what is known as the Negative List of Investment (Daftar Negatif Investasi or "DNI"). The DNI provides the list of area in which foreign investors are prohibited or restricted to enter into business in Indonesia. In concept, any area that is not listed in the DNI is open for foreign investment and domestic investment.

The establishment of PMA Company in Indonesia shall be under the supervision of Investment Board and in the form of a Limited Liability Company.

The recent law and regulations, which become the basis for the foreign investment in Indonesia are:

1. Law No. 1 Year 1967 and its amendments pertaining the Foreign Investment
2. Law No. 1 Year 1995 pertaining the Limited Liability Company
3. Presidential Decree No. 96 Year 1998 pertaining the Negative List of Investment.
4. Presidential Decree No. 99 Year 1998 pertaining the Sectors of Business for Small-Scale Enterprises and Sectors of Business open to Medium-Scale or Large-Scale Enterprises under a Partnership Arrangement.
5. Government Regulation No. 20 Year 1994 pertaining the Share Ownership in the Foreign Investment Company.
6. BKPM Decree No. 15 Year 1994 pertaining the Implementation Guidelines on the Share Ownership in the Foreign Investment Company.
7. BKPM Decree No 12 Year 1999 pertaining to the Foreign Investment in Holding Activity.
8. BKPM Decree No. 38 Year 1999 pertaining the Procedure of Foreign/Domestic Investment in Indonesia.

Pursuant to the above regulations, a PMA Company can be set up under Joint Venture scheme between Indonesian and Foreign Investors (where the Indonesian citizen or legal entity holds at the minimum of 5% of the share ownership of the PMA Company) or 100% foreign owned company.

B. Information Required for Formation of Company

According to the new Decree of the State Minister of Investment / Head of Investment Board Number 38/SK/1999 dated October 6, 1999, to obtain approval for setting up a PMA Company, the shareholders should complete and submit two copies of the Model I/PMA-form to the BPM, or Indonesian Embassy or Consulate General or Consulate (where the foreign investors are stationed) or Regional BPM (known as BKPMMD) where the project is located.

The application should have certain documents enclosed, i.e. :

- *By Indonesian participant*
 1. Copy of the Articles of Association of the company (if the shareholder of PMA Company is a company) along with copy of the Identity Card of the person signing the Model I/PMA-form or Identity Card (if the applicant is an individual);
 2. Copy of the Tax Identification Number (known as Nomor Pokok Wajib Pajak – NPWP).

- *By foreign participant*
 1. Copy of the Articles of Association of the company in English or Indonesian (if the proposed shareholder of PMA Company is a company) and copy of passport of the person signing the Model I/PMA-form on behalf the Company;
 2. Copy of the passport of an individual foreign citizen shareholder of the person signing the Model I/PMA-form if the proposed shareholder of PMA Company is an individual.

- Draft of the Joint Venture Agreement between the counterparts (not necessary for 100% foreign owned companies);

- Company profiles of the proposed shareholders of PMA Company (not necessary for individual shareholder);

- Explanation of scope of activities of a service sector investment or flow chart of the production process for a industrial sector investment;

- Power of Attorney to sign the Model I/PMA-form if the proposed shareholders of PMA Company are represented by another party, and also the copy of the passports of the persons giving the power of attorney and the proxy holder. In cases where the Model I/PMA-form is signed by a member of the Board of Directors (of a company) or an individual, also attached is the copy of the passport or Identity Card as well as copy of their appointment letter as the directors;

- Power of Attorney to us for submitting the application by attaching a copy of the passport of the person signing the Power of Attorney;

- Foreign investors intending to invest in certain business lines, such as mining especially for extraction activities, palm oil plantation, energy, and fishery sector investment, have to obtain a Recommendation Letter from the government body which regulates the industry in which the investment is being made. Such recommendation letter has to be applied for by the investor to the related

government body, by quoting the intended name of the PMA Company as well as its business line.

- Foreign investors intending to invest in the business lines (such as distributor, retailer, etc), which require the form of partnership ("Kemitraan") with the Indonesian Small-Scale Enterprise, have to attach:
 - The Partnership Agreement between the proposed PMA Company and the Indonesian Small-Scale Enterprise.
 - The statement letter from the Indonesian Small-Scale Enterprise stating that such Small-Scale Enterprise has fulfilled the criteria as the Small-Scale Enterprise.

Application and Company Formation Process

Once the shareholders have completed the Model I/PMA-form and affixed their signatures, the application will be reviewed, and when the BPM or other institution feels that all the information and documents provided are sufficient, then it shall be declared "complete". This process involves much cross checking between the BPM and other Ministries and will be evaluated in terms of suitability in various respects such as sectoral policies, technology, market, and finance.

The Investment Approval issued by BPM, Indonesian Embassy, Consulate General, Consulate or BKPM serves as the basis for the Deed of Articles of Association to be drawn up by a Notary in the Indonesian language. The PMA Company is considered to be legally established as of the date of the signing of the Deed of Articles of Association by the shareholders in front of the Notary, even though formal approval from the Ministry of Law and Regulations (formerly known as the Ministry of Justice or "the MOJ") has yet to be sought. However, until the Ministry of Law and Regulations's Approval is obtained, all risks raised as results of the company's transactions will be personally and severally held by the shareholders. That is, the limited liability does not come into effect until that time.

For the client information, there are three standard models of Deeds of Articles of Association issued by the Ministry of Law and Regulations, but Models II and III apply for most PMA companies. The difference between Model II and III is simply in the Article 9 – Transfer of Shares.

The signing procedure with the Public Notary requires the following documents and information:

1. Relevant documents of those stated as directors and commissioners, e.g. copies of passports, identity cards, and addresses;
2. Names, copies of passports or identity cards, and addresses of the persons who are going to sign the deed for and on behalf of the shareholders. Such persons can appoint proxies to represent them by providing Powers of Attorney. Please note that the Power of Attorney should be legalized by the notary abroad and authenticated by Indonesian Embassy in the country of residence of the signer.

Please also provide copies of passports or identity card and addresses of the proxy holders.

At the time of establishment of a Limited Liability Company (Perseroan Terbatas - PT in Indonesian), at least 25% of the PT's authorized capital must be subscribed, and each subscription of capital must have at least 50% of the par value of each share paid in, with legal proof of the payment. All of the shares that are issued must be 100% paid in prior to obtaining Ministry of Law and Regulations approval. The draft deed of establishment proposed by the founders, in certain cases, may be revised accordingly by the Ministry of Law and Regulations.

As soon as the Notary has issued the Notarial Deed of the Articles of Association, the PMA Company can commence operations. However, the shareholders will be personally liable for any actions taken by the company until the notarial deed is approved by the Indonesian Ministry of Law and Regulations.

The further steps to be taken once the Notary has issued the Articles of Association in order to obtain Ministry of Law and Regulations approval, are as follows :

1. Obtain a Letter of Domicile from the building management where the company is located (in case of rent) or Letter of Domicile issued by District Government / Municipal.
2. Obtain a Tax Identification Number (NPWP) and a VAT-able Firm Number to the Tax Office.
3. Open a PMA bank account in Indonesia under the name of PMA Company. It is often advisable to open a bank account in a foreign owned bank or a local branch of a foreign bank rather than a local bank as the procedure is more straight forward.
4. Transfer the amount of the PMA Company 's paid-up capital to the PMA Company 's bank account.
5. Submit via the Notary the Company's Deed of Articles of Association to the Ministry of Law and Regulations to obtain its approval, along with the transfer slip stating that the paid-up capital has been transferred by the shareholders, copy of the Tax Identification Number, and the Letter of Domicile. We will assist the client in liaison with the Notary. The process of obtaining the approval will take approximately 60 days from submission of the application.
6. Take the approved Deed of Articles of Association to the Trade and Industry Department for company registration (This is done by the Notary). Finally, it will be published in the State Gazette. Again we will assist the client in liaison with the Notary.

Summary

In brief, these are the steps to be taken :

1. Obtain Investment Approval from BPM or Indonesian Embassy, Consulate General, Consulate, or BPMD (approximately 2 – 3 weeks);

2. Draw up the Deed of Articles of Association of the new company (approximately 2 weeks);
3. Obtain the Tax Identification Number (approximately 1 week) and the VAT-able Firm Number (approximately 1 month);
4. Open a PMA Bank Account (approximately 1 week);
5. Transfer PMA Company's paid up capital to PMA Company's bank account;
6. Obtain the approval from the Ministry of Law and Regulations (approximately 2 months);
7. Secure the Company Registration with the Ministry of Industry and Trade (approximately 1 month);
8. Lodge the Deed of Articles of Association to the State Publisher in order to be published the State Gazette.

The time frame for the entire process for establishing a PMA Company can be estimated at five months.

Any changes in the implementation of the provisions stipulated in the Investment Approval should first need the approval of BPM or BKPM, through submission of an application to that effect.

All capital investors should submit to BKPM a periodic report known as a Capital Investment Activity Report (Laporan Kegiatan Penanaman Modal – LKPM) concerning the implementation of their capital investment, at the stage of the project development as well as at the stage of business activities especially, in the framework of utilization of the facilities in the reporting form.