

Overview on Foreign Investment in Indonesia

General Overview

Indonesia, with its abundant natural resources and burgeoning domestic market, is undoubtedly attractive to foreign investors. Foreign investments are made by investors from various countries in various business fields such as mining and energy, financial industries, plantation, telecommunication, media and other sectors.

The Government of the Republic of Indonesia has also sought to encourage foreign investment by issuing regulations and policies intended to make the investment license process simpler. One of such policies is the 'one-stop-shop' policy, as set forth in the Law No. 25 year 2007 on Investment ("**Investment Law**") and Presidential Decree No. 27 of 2009 on Integrated Services at One Door in the Investment Field. This policy is aimed to cut bureaucratic redtape and allow investors to process business licenses faster by obtaining relevant licenses in one place.

Direct Investment vs. Non-Direct Investment

The Investment Law differentiates between 'direct investment' and 'non-direct investment'. The Investment Law only regulates 'direct investment'.

Direct Investment

A 'direct investment' is defined as investment activity in any form by local or foreign investment to conduct business within the territory of the Republic of Indonesia. This direct investment is controlled and supervised by *Badan Koordinasi Penanaman Modal* or Investment Coordinating Board of the Republic of Indonesia (known as "**BKPM**"). BKPM is a government agency that reports directly to the President of the Republic of Indonesia, mandated to boost domestic and foreign investment through creating a conducive investment climate.

Any foreign investor who wishes to conduct a direct investment must firstly establish an Indonesian limited liability company called foreign direct investment company or PT Perusahaan Penanaman Modal Asing ("**PT PMA**") and further obtain the approval of and investment business license from BKPM. On the other hand, any local Indonesian limited liability company, which shares are acquired by foreign investor should also be converted into a PT PMA. The policy is that even only one share that is being

acquired by a foreign party, such company will still need to be converted into a PT PMA.

As an Indonesian limited liability company, the PT PMA will need to have at least 2 shareholders. The PT PMA company is managed by two-tier board comprising of the Board of Directors that conducts day-to-day management of the company and Board of Commissioners that conducts supervision over the management of the company. Such a company is established by virtue of Deed of Establishment containing the initial articles of association of the PT PMA which is made before an Indonesian notary. Note however that in practice, notaries are usually reluctant to assist the establishment of a PT PMA, if the proposed PT PMA has not yet obtained an Investment Registration Statement (“**IR Statement**”) from BKPM.

In order to obtain the IR Statement, the proposed shareholders of the PT PMA must submit an investment registration application to BKPM that includes the following information: proposed name of the PT PMA, name of shareholders and their respective shareholding percentage, proposed capital, project location, proposed address of the PT PMA, business field, investment amount plan, and proposed number of employees.

The process of setting up a PT PMA until obtaining investment business license from BKPM may take 3-4 months (without counting the grace period of 1-3 years to setting up factory, if required), and the process of conversion of local company into a PT PMA (resulting from an acquisition/take-over) may take 2-3 months to complete.

Non-direct Investment

Non-direct investment is also defined as ‘portfolio investment’. Whilst it is not clearly a defined term, the general understanding is that any investment made through the stock exchange in Indonesia should be deemed as a non-direct investment. Note however that this general understanding is sometimes not shared by BKPM itself. On certain occasions, BKPM’s officers have stated that any investment in majority stake of a listed company cannot be deemed as ‘portfolio investment’, in which case such type of investment will be governed under the Investment Law and shall be subject to BKPM’s approval and control. Notwithstanding, it can be seen in practice that many listed companies at the Indonesian Stock Exchange whose majority shares are owned by foreign shareholders are not ‘foreign direct investment companies’ or PT PMA which are controlled by BKPM and merely supervised by *Badan Pengawas Pasar Modal dan Lembaga Keuangan* or the Capital Market and Financial Supervisory Board or Bapepam-LK.

Investment Negative List

The basic concept is that all business fields are open for foreign investment, except for certain business fields which are stated by the relevant laws as closed or open with requirements. In this regard, the Government has issued President Regulation No. 39 of 2010 on List of Business fields Which Are Closed for Investments and Business fields That Are Conditionally Open for Investments, known as the “**Investment Negative List**”. The Investment Negative List provides list of certain business fields that are open with certain requirements, including the maximum foreign shareholding percentage in the company carrying activities in such business field. You may find the current Investment Negative List at www.bkpm.go.id.

Notwithstanding the different understanding between the BKPM and Bapepam-LK on the concept of ‘non-direct investment’, pursuant to the Investment Negative List, the Investment Negative List does not apply to non-direct investment or portfolio investment transacted through the stock exchange.

Investment in Specific Regulated Industries

Investment in certain specific industries is regulated under various laws and regulations, other than the Investment Law and its implementing regulations. Falling into this criteria is investment in financial sectors and upstream oil and gas sector. Investments in these areas are governed by government authorities other than BKPM. Foreign investment in bank is regulated by Bank Indonesia (the Indonesian Central Bank), foreign investment in securities company, multi finance company and insurance company is regulated by Bapepam-LK and the Minister of Finance, whilst foreign investment in upstream oil and gas sector is regulated by BP Migas/Pertamina.

This newsletter is for informational purposes only and does not constitute legal advice. Use of this newsletter does not create an attorney-client relationship between the contributing law firm and the reader. Readers should contact appropriate legal counsel for advice on any particular issue. Entire content copyright is owned by the contributing law firm. Reproduction and distribution of this newsletter in whole or in part without the written permission of the contributing law firm is expressly prohibited.