

# FOREIGN DIRECT INVESTMENT REGULATION

## I. Main Legislation

The main legislation of a foreign direct investment (“**FDI**”) is the Law number 25 of 2007 on Capital Investment (the “**Investment Law**”) and Law number 40 of 2007 on the limited liability company (the “**Company Law**”) and its implementing regulations. Other than the Investment Law and the Company Law, in doing FDI, foreign investor also must observe other laws and regulation related to business activity which will be carried out by them. This chapter covers general information on FDI based on the Investment Law and the Company Law which has been amended by Law number 11 of 2020 on Job Creation (the “**Omnibus Law**”) which officially enacted on 2 November 2020.

## II. Definition

Foreign investment is investment activity to conduct business in the territory of the Republic of Indonesia by a foreign investor, whether using all foreign capital or in partnership with a domestic investor. Investment by purchase shares in the Indonesian stock exchange is not included in the definition of FDI.

## III. Business Entities

To conduct FDI, a foreign investor must set up a foreign investment limited liability company, namely PMA Company. In some business activities, foreign investor may choose to set up PMA Company or representative office. This option available to carry out construction services and to be a contractor in upstream oil and gas business activity.

## IV. PMA Company

- A limited liability company incorporated based on Indonesian Law, domiciled in Indonesia, partly or wholly owned by foreigner, foreign legal entity or foreign government.
- May only carry out business activities which open for foreign investment as stipulated in the Presidential Regulation.
- Must have three organs, general meeting of shareholders (GMS), board of commissioner (BOC) and board of director (BOD). GMS must consist at least 2 shareholders (natural person or legal entity). BOC must consist at least 1 natural person. BOD must consist at least 1 natural person.
- Capital of a PMA Company consists of authorized capital, subscribed, and paid up capital. The amount of authorized capital is determined by its founders.
- It shall obtain Business Licensing from the central government or regional government.
- It shall be classified as large-scale business and may only form a partnership with cooperative, micro, small and medium enterprise as stipulated at law on micro, small, and medium enterprise.

## **V. Rights, Obligations and Responsibilities of Foreign Investor**

- A foreign investor is entitled to obtain: (1) right certainty, legal certainty and protection certainty; (2) open information about business fields it is running; (3) service; and (4) various forms of facility according to the prevailing laws and regulations.
- A foreign investor shall: (1) apply the principle of good company management; (2) implement the company's social liability; (3) make report on investment activity and submit it to the Investment Coordinating Board; (4) respect cultural tradition of communities around the location of investment business activity; and (5) comply with all of the prevailing laws and regulations. For a foreign investor exploiting non-renewable natural resources, it shall allocate fund in stages for the recovery of location that fulfils the standard of environmental worthiness, which implementation shall be in accordance with prevailing laws and regulation.
- A foreign investor has responsibility to: (1) secure capital originating from any sources not in violation with prevailing laws and regulations; (2) bear and settle any obligations and losses if such investor halt or leave or abandon its business activity unilaterally in accordance with prevailing laws and regulations; (3) create healthy competitive business climate, refrain from monopoly practice, and any other matters that inflict damage to the state; (4) preserve the environment; (5) provide safety, health, convenience, and prosperity to workers; and (6) comply with prevailing laws and regulations.

## **VI. Business Activities**

The Omnibus Law amends article 12 of the Investment Law which regulates business activities of investment, either FDI or domestic direct investment. It states all business activities are open for investment, except for business activities which are closed for investment or business activities that may only be carried out by the central government. Business activities are closed for investment are as follows:

- a. Cultivation and industry of class 1 narcotics;
- b. Any form of gambling and/or casinos activities;
- c. Fishery of fish species listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- d. Any use or collection of coral, including natural coral, for building materials/lime/calcium, aquariums and souvenirs/jewellery, and any natural living or recent death coral;
- e. Industry of chemical weapons production; and
- f. Industry of industrial chemicals and ozone-depleting substances.

Further provisions on business activities open for FDI will be stipulated in the Presidential Regulation which shall be issued within 3 (three) months since the enactment of the Omnibus Law.

## **VII. Investment Facility**

- The central government may grant investment facilities to investors who expand or start their business activity. Investment which is eligible to receive investment facility shall meet at least the following criteria: (1) employing plenty of workers; (2) belonging to high priority scale; (3) belonging to infrastructure development; (4) transferring technology; (5) pioneering new industry; (6) domiciling in remote area, deserted area, border area, or any other area deemed necessary; (7) preserving environment; (8) conducting research, development, and making

innovation; (9) making partnership with micro, small and medium sized enterprises, or cooperatives; (10) industry using capital goods or machinery or equipment produced domestically; and/or (11) included as tourism development.

- Form of facilities granted are subject to taxation laws and regulations.

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