



WPG INDONESIA:

FREQUENTLY ASKED QUESTIONS REGARDING FOREIGN INVESTMENT IN INDONESIA

By WongPartnership and Makes & Partners,
member firms of WPG, a regional law network.

Frequently Asked Questions Regarding Foreign Investment in Indonesia

As one of the fastest growing economies in Asia, investors will find that Indonesia is a country of many opportunities that welcome foreign investment. Investing in Indonesia, however, can be challenging for investors who are not familiar with its legal system and myriad rules and regulations.

In this article, we set out answers to some of the questions which are frequently asked of us by both first-time as well as seasoned investors in Indonesia.

What are some of the vehicles foreign investors (“Investors”) may use to invest in Indonesia?

Investors may choose to invest in Indonesia through any of the following three vehicles:

- the establishment of a representative office;
- the formation of a joint operation arrangement; or
- the establishment of a locally incorporated company.

What is the difference between a representative office, a joint operation arrangement and a locally incorporated company?

Representative office

A representative office is a representation of an existing foreign company in Indonesia. There are four types of representative offices:

- a foreign representative office (*Kantor Perwakilan Perusahaan Asing* or “**KPPA**”);
- a foreign company trade representative office (*Kantor Perwakilan Perusahaan Perdagangan Asing* or “**KP3A**”);
- a representative office of a foreign construction service company (*Kantor Perwakilan Badan Usaha Jasa Konstruksi Asing* or “**BUJKA**”); and
- a representative office of a foreign oil and gas company (*Kantor Perwakilan Asing Subsektor Minyak dan Gas Bumi* or “**KPPA MIGAS**”).

The type of activities of the foreign company in Indonesia will determine the type of representative office that should be established. Representative offices are generally permitted to supervise and coordinate the affairs of its parent company in Indonesia and to act as a point of contact for the parent company in Indonesia. Representative offices are, however, not permitted to generate any revenue or income (except for BUJKA).

Joint Operation Arrangement

A joint operation arrangement is relevant only in the construction industry and real estate development projects, and is effected through a joint operation contract (*Kerja Sama Operasi* or “**KSO**”) between a foreign construction company and a local construction company. The KSO is not a separate legal entity, and exists only for a fixed duration in relation to a particular project. Risks and rewards are shared between the parties of the KSO based on the terms of the KSO.

Locally Incorporated Company

A locally incorporated company with foreign investment takes the form of a *Perusahaan Penanaman Modal Asing* or “**PT PMA**”. It is a separate legal entity and will exist for such period as is set out in its constitutive documents. The shareholders of the PT PMA are owners of the company based on their respective shareholding proportions.

Is there anything in particular that Investors should be aware of before they invest in Indonesia?

As a first step, Investors have to check whether their proposed business is open for foreign investment in accordance with the Investment Negative List under the Presidential Regulation No. 44 of 2016 on Lists of Business Fields that are Closed and Business Fields that Are Open with Conditions to Investment (*Daftar Negatif Investasi* or “**DNI**”). The DNI sets out a list of businesses which are (i) closed for foreign investment or (ii) open for foreign investment but subject to certain conditions. With regard to businesses that are open for foreign investment and listed in the DNI, the DNI reserves a maximum percentage of foreign investment ranging from 49% up to 95% depending on the line of business. Lines of business which are not listed in the DNI are generally construed as not having any restrictions on the maximum percentage of foreign investment.

The DNI is organised by reference to the numbers associated with business activities that are described in the Indonesian Business Fields Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* or “**KBLI**”). The KBLI is issued by Indonesia’s Central Statistics Body (*Badan Pusat Statistik*). A PT PMA is permitted to have more than one KBLI number based on its business activities, unless the relevant laws and regulations provide otherwise.

Investors should also note that, according to Law No. 25 of 2007 on Investment (“**Investment Law**”), any company with any foreign shareholding, regardless of percentage, is considered a PT PMA. Representative offices and KSOs are not subject to the restrictions set out in the DNI.

Is a PT PMA required to have a minimum number of shareholders?

Law No. 40 of 2007 on Limited Liability Company (“**Company Law**”) requires a limited liability company to have at least 2 (two) shareholders. The shareholders may be individuals or legal entities. As such, for businesses that are open to 100% foreign investment, a foreign investor would need to identify a second shareholder (which may be its affiliated party) to hold shares in the PT PMA.

Is there a minimum amount of investment needed to establish a PT PMA in Indonesia?

Under the Investment Coordinating Board Regulation No. 6 of 2018 on the Guidelines and Procedure for Capital Investment Licensing and Facilities, a PT PMA needs to satisfy the following requirements:

- (i) the total investment value in PT PMA must be more than Rp10,000,000,000 (ten billion Rupiah), excluding land and buildings ("**Minimum Investment**"). Further, based on Ministry of Finance Regulation No. 169/PMK/010/2015 of 2015, the Minimum Investment amount can be in a form of equity and debt, with a ratio of not more than 1:4;
- (ii) the total issued and paid-up capital must be equal to the subscribed capital with an amount of at least Rp2,500,000,000 (two billion five hundred Rupiah); and
- (iii) the share participation of each shareholder must be at least Rp10,000,000 (ten million Rupiah) and the share percentage must be calculated based on the nominal value of the shares.

What are the main registration requirements to establish a PT PMA?

The main registration requirements to establish a PT PMA are as follows:

- (i) the PT PMA must comply with any shareholding limitation requirement set out in the DNI (see the third Question above);
- (ii) a deed of establishment in the Indonesian language must be executed by the shareholders before an Indonesian public notary; and
- (iii) the approval from the Ministry of Law and Human Rights (*Menteri Hukum dan HAM* or "**MOLHR**") for the establishment of the PT PMA must be obtained.

After the establishment of PT PMA, it shall conduct the following:

- (i) obtain a certificate of domicile (*Surat Keterangan Domisili Perusahaan* or "**SKDP**") from the Sub-District Head of the relevant regency;
- (ii) obtain a taxpayer registration number (*Nomor Pokok Wajib Pajak* or "**NPWP**");
- (iii) open a bank account under the name of PT PMA in Indonesia;
- (iv) obtain a Single Business Number (*Nomor Induk Berusaha* or "**NIB**"); and
- (v) obtain the appropriate business and operational licences before it commences production/operation.

Are nominee arrangements permitted?

A nominee arrangement (i.e., an arrangement where a local party holds shares for and on behalf of a foreign party) is prohibited under Article 33 of the Investment Law. The purpose of the restriction is to prohibit any arrangement whereby a company is formally owned by a party while being beneficially owned by a different party. According to the Investment Law, a nominee agreement entered by and between a local party and a foreign investor is null and void.

What are the board/management systems of a PT PMA and what are their respective roles and authorities?

The Company Law recognises a two-tier governance system, consisting of (i) a board of directors, as the executive/management body of the company which has the general responsibility to manage the day-to-day operations and affairs of the company and represent the company in dealings with any third party; and (ii) a board of commissioners as a supervisory body which has the general responsibility to supervise and provide advice to the board of directors in their management of the company.

Can investors hold shares with preferential rights?

Shareholders can hold shares with certain preferential rights. The Company Law recognises different classifications of shares, e.g., shares with the right to nominate members of the Board of Directors/Commissioners, shares with priority rights to receive dividends or liquidation proceeds etc.

Is a PT PMA permitted to employ foreigners in Indonesia?

A PT PMA may employ foreigners in Indonesia. There is, however, a list of positions under Law No. 13 of 2003 on Manpower (“**Manpower Law**”) that cannot be assumed by foreigners. As a general rule, foreigners cannot assume a position that handles human resource matters. Foreigners must also obtain a work and stay permit to work in Indonesia. Further, the Manpower Law also requires employers to employ certain number of Indonesians for each foreign employee as a prerequisite to grant a work permit to a foreign employee.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership or Makes that you normally deal with or any of the following partners:



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ABOUT WPG

WPG, a regional law network, brings together a group of five prominent law firms across seven countries in a collaboration to provide clients with legal services in ASEAN, China and the Middle East.

In addition to WongPartnership, a Singapore-headquartered firm with offices in Beijing, Shanghai and Myanmar, the network includes member firms Al Aidarous Advocates and Legal Consultants (Middle East), Foong & Partners (Malaysia), Makes & Partners (Indonesia) and Zambrano Gruba Caganda & Advincula (Philippines). Together, WPG is able to offer the expertise of over 400 professionals to meet the needs of clients in key sectors throughout the region.



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The partnership between Makes & Partners and WongPartnership offers a full range of services to clients including transactional, advisory and dispute resolution capabilities.

Both firms regularly work together on a range of corporate/M&A transactions, both inbound and outbound, in Indonesia and the region. Working seamlessly on various matters, the team has been able to deliver commercially focused advice and negotiation skills that drive successful outcomes for clients. Through a full-service offering, we are able to deliver to clients access to a team of highly experienced dispute resolution lawyers, including a number of specialists who are recognised leaders in their fields, who are committed to protecting their clients' interests throughout the region.

AWARDS

Makes & Partners is consistently recognised in various leading legal publications.



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