

Please contact us  
for further information;

Dendi Adisuryo  
Partner  
dendi.adisuryo@adcolaw.com

Kevin Arzaqi  
Associate  
kevin@adcolaw.com

+6221-52903034  
info@adcolaw.com

# Establishment of Foreign Company in Indonesia

## A. Legal Basis

1. Law of the Republic of Indonesia Number 25 of 2007 on Investment ("**Investment Law**");
2. Law No. 40 of 2007 on Limited Liability Company ("**Company Law**");
3. Law No. 13 of 2003 on Manpower ("**Law 13/2003**");
4. Law No. 28 of 2007 on the third Amendment to Law No. 6 of 1983 on General Provisions and Tax Procedures ("**Law 28/2007**");
5. Government Regulation No. 24 of 2018 on Electronic Integrated Business Licensing Services ("**GR 24/2018**");
6. Presidential Regulation of the Republic of Indonesia No. 44 of 2016 on List of Closed Business Fields and Open Business Fields with Requirements in the Field of Investment ("**Negative List of Investment**");
7. Regulation of the Investment Coordinating Board No. 5 of 2018 on Details of Business Field and Types of Pioneer Industry that Can be Granted Deduction of Income Tax ("**BKPM Regulation 5/2018**");
8. Regulation of the Investment Coordinating Board No. 6 of 2018 on Guidelines and Procedures for Licensing and Investment Facilities ("**BKPM Regulation 6/2018**");
9. Regulation of the Investment Coordinating Board No. 7 of 2018 on Guidelines and Procedures for Control of Investment Implementation ("**BKPM Regulation 7/2018**");
10. Regulation of the Minister of Manpower No. 10 of 2018 on Utilization of Foreign Workers ("**RoMM 10/2018**"); and
11. Decree of the Minister of Manpower and Transmigration No. 40 of 2012 on Specific Positions which are prohibited from being occupied by Foreign Workers ("**MoM Decree 40/2012**").

## B. Foreign Investment Under Indonesian Law

### Limited Liability Company

Foreign Investment under Investment Law is defined as any investing activities in running businesses within the territory of the Republic of Indonesia carried out by any foreign investors (including foreign citizens, foreign corporations, or foreign states) which are either entirely made up of foreign capital or joint capital between foreign and domestic capital.

Pursuant to Article 5 paragraph 2 of Investment Law, the foreign investment shall be in the form of a limited liability company which is domiciled within the territory of the Republic of Indonesia (“PT PMA”).

The PT PMA should be owned by a minimum of 2 shareholders that can be individuals, corporate shareholders or a combination of both.

Negative List of Investment

Please note that not all business sectors in Indonesia are fully open to foreign investment. Therefore, investors need to check each sector first in the Negative List of Investment. Pursuant to the Negative List of Investment, there are three types of business sectors for investment, namely, (i) open business sectors; (ii) closed business sectors; and open business sectors with certain conditions.

- Open business sectors  
Open business sectors are business sectors that can be entered by 100% of foreign investment. The Negative List of Investment does not specifically list business sectors which fall under the open business sectors. Therefore, so long as the business sectors are not listed as closed business sectors or open business sectors with certain conditions, and there are no other restrictions from technical ministries, then the unlisted sectors shall constitute open business sectors.

Examples: automotive manufacturing, restaurant, etc.

- Closed business sectors  
Business sectors which are listed under this section are closed and prohibited for investment activities due to specific reasons including but not limited to the conditions that the industry is very important in nature, or the business itself is restricted under Indonesian laws.

Examples:

No.	Closed Business Sectors	KBLI	Sector
1.	Vessel Traffic Information System (VTIS)	52221	Transportation
2.	Liquor industry containing alcohol	11010	Industry
3.	Government Museum	91021	Education and cultural
4.	casino	92000	Tourism and creative economy

- Open business sectors with certain conditions  
Business sectors which are listed under this section are business sectors that are open to foreign investment activities with certain conditions. For instance, the business shall be conducted in partnership with micro, small and medium enterprises or cooperatives; the business shall obtain special

licensing from other government institutions; or the business is subject to certain limitations on foreign ownership.

Examples:

No.	Open Business Sectors with Certain Condition	KBLI	Sector
1.	Power plant < 1MW	35101	100% domestic capital
2.	Conventional Bank	64125	Permit from the Financial Services Authority (“OJK”)
3.	Oil and gas construction services: platform	09100	Maximum foreign investment of 75%
4.	Maritime cargo handling services (CPC 7412)	92000	Maximum foreign investment of 67% and ASEAN countries for a maximum of 70%.

### Capital and Shareholder Requirements

The capital and shareholder requirements for PT PMA are as follows:

- a. The total investment value shall be greater than IDR 10,000,000,000 excluding the land and buildings;
- b. The paid-up and issued capital shall be at least IDR 2,500,000,000; and
- c. The nominal value of shares for each shareholder shall be at least IDR 10,000,000.

### Prohibition in Using Nominee Arrangement

Pursuant to Article 33 paragraph (1) of Investment Law and Article 6 paragraph (6) of the BKPM Regulation 6/2018, the investors are prohibited from making agreements and/or statements that affirm that the share ownership in a limited liability company is for and on behalf of the other party. Such the arrangement which is also known as Nominee Arrangement is not recognized under the Indonesian Law. Therefore, any Nominee Arrangements for the establishment of PT PMA shall automatically become null and void by law.

## C. Establishment of Foreign Company in Indonesia

### Procedure to Establish PT PMA

Establishment of PT PMA basically refers to Company Law of which the process consists of:

1. Preparation stage

Prior to establishing PT PMA, foreign investors shall prepare the following:

- a. Company name;
  - b. Company address;
  - c. Board of Directors (there should be at least one individual director);
  - d. Board of Commissioners (there should be at least one individual commissioner);
  - e. A minimum of 2 (two) shareholders and their respective shareholdings (in the form of limited liability company and/or individual);
  - f. Capital structure.
2. Company Establishment
- a. Foreign Investors apply to reserve the intended name for the PT PMA to the Minister of Law and Human Rights through a public notary;
  - b. After securing the intended name for the PT PMA, Foreign Investors may execute the Deed of Establishment of the PT PMA containing the proposed company's Article of Association. The Deed of Establishment will be signed by the founding shareholders under a notarial deed which is made in the Indonesian language, and must be approved by the Minister of Law and Human Rights;
  - c. To obtain approval from the Minister of Law and Human Rights, the notary shall apply through the administration system of the legal entity (SISMINBAKUM) no later than 60 (sixty) days since the signing date of the Deed of Establishment.
3. Obtaining General Licenses
- a. Foreign Investors shall submit an application to obtain a Letter of Domicile (*Surat Keterangan Domisili Perusahaan*/"SKDP");
  - b. Foreign Investors shall submit an application to obtain a Taxpayer Identification Number (*Nomor Pokok Wajib Pajak*/"NPWP");
  - c. Foreign Investors shall register through an Online Single Submission ("OSS") Account to obtain a Single Business Number (*Nomor Induk Berusaha*/"NIB"). Please note that The NIB also serves as (i) Certificate of Company Registration (*Tanda Daftar Perusahaan*/"TDP"); (ii) Importer Identification Number (*Angka Pengenal Impor*/"API"); and (iii) Customs Access (*Akses Kepabeanan*). The NIB will also be required for obtaining the Business License and Commercial/Operational License. NIB shall be valid as long as the company still conducts its business activities in accordance with the prevailing laws and regulations.
4. Obtaining Business Licensing (*Perizinan Berusaha*)

Pursuant to Article 1 point 4 of GR No. 24/2018, Business Licensing is defined as the registration provided for the Investor to start and operate the business and/or activity of which Business Licensing is granted in the form of an approval as outlined in the form of a letter/decision or fulfillment of the terms and/or commitment.

Business Licensing under OSS consists of:

- a. Business License (*Izin Usaha*); and
- b. Commercial/Operational License (*Izin Operasi*).

A Business License is granted after the Investor obtains the NIB and starts conducting its business activities before the company starts to operate commercially. Meanwhile, an Operational License is granted after the fulfillment of commitment as stated in the Business License.

Please note that not all Business Licenses can be applied online through the OSS system. For several business sectors, licenses shall be applied through the Electronic Information Service and Investment Licensing System ("SPIPSE")/One Stop Service Center at BKPM. Those business sectors are as follows:

Business Sector	License
Mineral and energy resources	<u>Electricity sector</u> a. Geothermal permit; and b. Assignment of preliminary surveys and geothermal exploration.
	<u>Oil and gas sector</u> a. Permit for utilization of oil and gas data; b. Survey permit; c. Oil and gas storage business permit.
	<u>Mineral and coal sector;</u> a. Exploration and mining business permit; b. Termination of mining business licenses due to returns; c. Mining business permit for production and operation extensions.
Public work and public housing sectors	a. Permit for construction and property business; and b. Housing business license.
Customs and tax facilities	a. Provision of import licenses for certain goods; b. Proposal for tax holiday exemption or reduction facilities; and c. Proposal for corporate income tax facilities in certain areas (tax allowances).
Capital investments	a. KPPA permit; b. Permit for opening branch offices for several sectors; c. Recommendations for granting limited residence visas as shareholders; d. Recommendations for transfer of visit residence permit status to a limited residence permit; and e. Recommendations for transfer of a limited residence permit status to a permanent residence permit.

## 5. Business Licensing Fee

Pursuant to Article 77 of GR No. 24/2018, any Business Licensing Fee shall be paid by the Investor in accordance with the prevailing laws and regulations. The payment of Business Licensing Fee will be considered as part of the fulfillment of commitment by the Investor. Once the Business Licensing Fee is paid, the Investor shall upload the proof of payment to the OSS system.

Since the Investment Fee is considered as part of the commitment that has to be fulfilled by the Investor, failure to pay the Investment Fee may lead to the revocation of the Business License issued.

### Bank Account

All banking transactions (such as capital injection, administration of loans, payment of capital equipment, raw material, etc.) of a newly established PT PMA should be administered through a special foreign investment bank account in Indonesia. In general, the documents required to open such account are as follows:

1. Single Business Number (*Nomor Induk Berusaha* or NIB), Deed of Establishment, Company Domicile Certificate (*Surat Keterangan Domisili Perusahaan* or SKDP), Tax ID (NPWP).
2. The power of attorney, which is specifically required for another person to be legally authorized to open a bank account.
3. Resident Identity Card (*Kartu Tanda Penduduk* or KTP) or passport of the authorized person to open a bank account.
4. Photo of the authorized person to open a bank account.
5. A minimum deposit of IDR 10 million or USD 1,000.

## D. Reporting Obligation

PT PMA has a reporting obligation in the form of an Investment Activity Report (LKPM). The obligation to submit LKPM is regulated under Article 7 of BKPM Regulation 7/2018. The obligation to submit LKPM is carried out online and periodically through SPIPSE. Investors who conduct business with an investment value of more than IDR 500,000,000 shall submit LKPM.

Investors shall submit LKPM every 3 months with the format as listed in Appendix I of the BKPM Regulation 7/2018. The LKPM reporting period is as follows:

1. Quarterly report 1, submitted no later than the 10th of April of the related year;
2. Quarter report 2, submitted no later than the 10th of July of the related year;
3. Quarter report 3, submitted no later than the 10th of October of the related year;
4. Quarter report 4, submitted no later than the 10th of the following January.

## E. Utilization of Foreign Worker

### Licensing

In case a Foreign Investment Company intends to utilize foreign workers, the company shall submit an application to legalize the Foreign Worker Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing*/"RPTKA") through the OSS system by submitting the following information:

- a. Reasons for utilizing foreign workers;
- b. Position of the foreign workers in the company's structure of the organization;
- c. Utilization period of the foreign workers;
- d. Appointment of Indonesian workers as the assistant for the foreign workers;  
and
- e. Total of foreign workers.

The OSS system will process the application in accordance with the information entered. If the application is approved, the OSS system will issue the legalization for the RPTKA. According to Article 29 of GR No. 24/2018, such legalization will also be considered as Foreign Worker Utilization Permit (*Izin Mempekerjakan Tenaga Kerja Asing*/"IMTA").

### Compensation Fund for Utilizing Foreign Workers

Pursuant to Article 23 of RoMM 10/2018, every company which utilizes foreign workers shall pay the compensation fund (*Dana Kompensasi Penggunaan Tenaga Kerja Asing/DKP-TKA*) in the amount of US\$ 100 (one hundred United States Dollars) per position per person per month as PNBP. This fund will be exempted if the company employs the foreign workers as members of the Board of Directors or Board of Commissioners and also if the foreign workers hold shares in the company.

### Position of Foreign Workers in the Company

In general, foreign workers can work in Indonesia provided that:

- the work cannot be performed by Indonesian citizens;
- The law does not prohibit foreign workers from performing that type of work;  
and
- The employer has obtained written permission from the relevant Minister to employ foreign workers.

However, it should be noted that pursuant to MoM Decree 40/2012, foreign workers cannot be placed in positions of human resources, e.g.: Director of Human Resource/Personnel, Industrial Relations Manager, Human Resources Manager, Personnel development Supervisor, Chief Executive Officer.

In addition, according to Article 8 of RoMM 10/2018, a company may employ foreign workers that have been employed by other employers in certain positions as follows:

- a. Directors or commissioners, who are not shareholders;
- b. Certain sectors, such as educational and vocational training, digital economy, as well as oil and gas sector specifically for contractors under a cooperation contract.

However, such employment can only be performed if the respective worker is permitted by the first employer.

## F. Fiscal Facility for Foreign Investor

### Import Duty

All investment projects of Foreign Direct Investments and Domestic Direct Investments (*Penanaman Modal Dalam Negeri* or PMDN) issued by the OSS system will be granted the exemption of Import Duty so that the final tariffs will reach 0%. This facility applies to:

1. the importation of capital goods namely machinery, equipment, and auxiliary equipment for an import period of 2 years starting from the date of the stipulation of decisions on import duty exemption;
2. The importation of goods and materials or raw materials regardless of their types and composition, which are used as materials or components to produce finished goods or to produce services for the purpose of 2-year full production (accumulated production time);
3. The importation to the extent of machines, goods and materials which are:
  - a. not produced in Indonesia;
  - b. produced in Indonesia, but they don't meet the required specifications;
  - c. produced in Indonesia, but the quantity is not sufficient for the needs of the industry.

### Tax Holiday

Reduction of Corporate Income Tax (Tax Holiday) is given at 100% (one hundred percent) of the amount of the Corporate Income Tax owed. According to BKPM Regulation 5/2018, applicants or companies should meet the following criteria:

1. The Company must be engaged in pioneer industries such as:
  - a. Upstream metal base industry (iron steel and non-steel) with or without derivatives, which are integrated.
  - b. Oil and gas refining industry with or without its derivatives, which are integrated.
  - c. Petroleum-based petrochemical industry, natural gas or coal with or without derivatives, which are integrated.



- d. Inorganic basic chemical industry with or without derivatives, which are integrated.
  - e. Basic organic chemical industry originating from agricultural, plantation or forestry products with or without derivatives, which are integrated.
  - f. Pharmaceutical raw material industry with or without derivatives, which are integrated.
  - g. Manufacturing industry of semi-conductors and other major computer components such as semiconductor wafers, backlights for Liquid Crystal Display (LCD), electrical drivers, or Liquid Crystal Display (LCD) that are integrated with the computer manufacturing industry.
  - h. Manufacturing industry of major communication equipment components such as semiconductor wafers, backlights for Liquid Crystal Display (LCD), electrical drivers, or Liquid Crystal Display (LCD) that are integrated with the manufacturing industry of mobile phones (smartphones).
  - i. Manufacturing industry of major components of medical devices that are integrated with the industry of manufacturing irradiation, electromedical or electrotherapy equipment.
  - j. Manufacturing industry of major industrial machinery components such as electric motors or internal combustion motors that are integrated with the machinery manufacturing industry.
  - k. Manufacturing industry of major engine components such as pistons, cylinder heads, or cylinder blocks that are integrated with the manufacture of four-wheeled or more motorized vehicles.
  - l. Manufacturing industry of robotic components integrated with the machinery manufacturing industries.
  - m. Manufacturing industry of main components of ships integrated with the shipbuilding industry.
  - n. Manufacturing industry of major aircraft components such as engines, propellers, rotors, or structural components integrated with the aircraft manufacturing industry.
  - o. Manufacturing industry of major train components such as engines or transmissions integrated with the railroad manufacturing industry.
  - p. Power plant machinery industry, including the waste of power plant machinery industry.
  - q. Economic infrastructure.
2. The company must be a new investment
  3. The company must have a value of the new investment plan of at least IDR 500,000,000,000 (five hundred billion rupiahs).
  4. The company must fulfill the provisions on the ratio between debt and capital as referred to in the Regulation of the Minister of Finance on determining the ratio between the company's debt and capital for the purposes of calculating Income Tax.
  5. Having not yet been issued a decision or a notification regarding the refusal to reduce the Corporate Income Tax by the Minister of Finance.
  6. The company must have a status as an Indonesian legal entity.

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By combining commercial sensibilities and legal expertise, ADCO Law assists the clients to structure, organize and implement their business ventures and investments, including structuring, financing and securing investments as well as establishing new foreign companies in Indonesia. Should you have more queries regarding this matter, please do not hesitate to contact us.

#### ADCO Law

Setiabudi Building 2, 2nd Floor, Suite 205C  
Jl. H.R. Rasuna Said Kav. 62, Setiabudi Karet  
Jakarta Selatan, 12920, Indonesia.

Phone : +6221 520 3034

Fax : +6221 520 3035

Email : [dendi.adisuryo@adcolaw.com](mailto:dendi.adisuryo@adcolaw.com)

Website : [www.adcolaw.com](http://www.adcolaw.com)