

Investing in Indonesia

The lifecycle of a foreign direct investment (FDI) project in Indonesia can generally be divided into three phases:

- establishment
- operation
- exit

The following are the questions that are commonly asked by investors from the investment, employment and regulatory aspects.

Section One

Establishment Phase

1. What type of presence do investors need to set up if they plan to do business in Indonesia?

There are generally two ways for investors to do business in Indonesia within the framework of foreign direct investment in Indonesia:

- a. Establish a local subsidiary in the form of a limited liability company for foreign investment purposes (“PMA Company” or *Perusahaan Penanaman Modal Asing*).
- b. Establish a representative office (“RO”).

It is required under Law No. 25 of 2007 on Investment (“Indonesian Investment Law”) for foreign investors that wish to have direct investment and engage in commercial and business activity (i.e., provide services or sell goods) in Indonesia to set up a PMA company. A PMA company is a fully-fledged incorporated company with legal entity status that can carry out a full range of commercial and business activities as permitted by the prevailing rules and regulations in Indonesia.

Another option is to establish an RO. An RO is a licensed office set up in Indonesia by a foreign company. Its permitted activities are limited in scope but generally include carrying out market feasibility studies and liaison activities (i.e., acting as a local contact office to connect its overseas head office with parties in Indonesia).

It is generally restricted for an RO to conduct any business activity in Indonesia (e.g., concluding contracts, issuing invoices, and receiving payments). There are different types of ROs (e.g., regional RO, trade RO, public works RO, etc.), and each type has its own specific permitted activity. The exception to this rule is a Public Works RO, which can perform income-generating activities (i.e., providing construction services).

A branch might be established in very limited circumstances.

2. Is there a minimum amount of investment needed to establish a PMA company in Indonesia?

The requirements pertaining to the minimum amount of investment of PMA Company differs between businesses that are classified in accordance with the investment regulations. In general, to engage in one business activity in one location, which is classified under Indonesia Industrial Standard Classification (Klasifikasi Baku Lapangan Usaha Indonesia), the minimum investment must be higher than IDR 10,000,000,000 (ten billion Indonesian Rupiah), not including investment in land and building. This investment amount may consist of capital injection or other financing sources. Note that the investment amount is different from the capital amount. The capital amount will be part of or the same as the investment amount, depending on the business and investment plan.

Some exceptions may be applicable, for example, if the PMA company is engaged in a trading business. In addition, a PMA Company must have an issued and paid-up capital of at least IDR 10,000,000,000 (or its equivalent in USD). This minimum capital requirement is generally applicable for PMA Companies in all sectors unless determined otherwise in the applicable laws and regulations (e.g., banking sectors' regulations require a higher capital threshold). For investments higher than the minimum requirement, loan financing is also allowed when taking into account tax considerations.

Different minimum investments and paid-up capital requirements may be applicable for particular sectors; for example, in the financial sector. Please also note that the requirement of the minimum amount of investment does not apply to RO.

3. Can investors own 100% of the shares in a PMA company?

Although Presidential Regulation No. 10/2021, as amended by Presidential Regulation No. 49/2021 ("Investment List"), expressly states that generally, all businesses are open for domestic and foreign investment, there are several classifications and limitations that apply for certain businesses: (a) eight businesses that are closed for foreign investment which can be carried out by the central government, (b) allocated business sectors or partnerships with cooperative (koperasi) and micro-small-medium enterprises, (c) open businesses with certain requirements, including businesses that are open only for 100% local investors, limited foreign shareholding businesses, and investment with special licenses.

With respect to businesses that are open for foreign investment, the Investment List reserves a maximum percentage of foreign shareholding as low as 49%. Lines of business which are not listed in the Investment List are generally construed as being 100% open for foreign investment. However, in certain cases, the limitations of ownership could also be stipulated in the specific sectoral regulations.

As a matter of customary practice, it is advisable to have further discussions with the BKPM and/or the relevant supervising Ministry/Authority to ascertain and ensure that the proposed line of business is wholly open for foreign investors or if there are any additional requirements for the investment.

Businesses that are closed for foreign investment that can be carried out by the central government include, among others, the following: (a) cultivation and industry of class I narcotics; (b) all forms of gambling and/or casino activities; (c) the capture of fish species listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); (d) utilisation or collection of corals and utilisation or collection of corals from nature used for building materials/lime/calcium, aquariums, and souvenirs/jewellery, as well as live corals or recent death corals from nature; (e) chemical weapons manufacturing industry; (f) industrial chemicals industry and ozone layer depleting substances industry; (g) alcohol and malt beverage industry; and (h) activities that are of a service nature or in the context of defence and security that are strategic in nature and cannot be carried out or cooperated with other parties.

4. Is there a minimum number of shareholders in a PMA company, and can they be an individual or a corporate entity?

Indonesian Company Law requires a limited liability company to have at least two shareholders, which can be an individual or a legal entity. For investments that are 100% open, the foreign investor needs to identify a second shareholder (which can be its affiliated party) to hold shares in the PMA company.

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5. Is a nominee arrangement allowed?

A nominee arrangement (i.e., an arrangement for the local party holding shares on behalf of a foreign party) is prohibited under the Indonesian Investment Law. The purpose of the restriction is to avoid an 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 shall be declared null and void.

6. What type of licensing needs to be obtained by a PMA company?

The current licensing practice in Indonesia is relatively new, following the implementation of the Omnibus Law. The business licensing requirements depend on the business risk level, which are divided into four level categories (i.e., low risk, medium-low risk, medium-high risk and high risk) in reference to the PMA company business classification.

In general, there are three types of licensing depending on the risk level:

1. Business Identification Number (NIB).
2. Standard Certification.
3. Licenses/permits.

Low-risk businesses require only an NIB, while Standard Certification is generally also required for medium-low and medium-high-risk businesses. Licenses/permits are required for high-risk businesses.

In addition, a PMA Company will also have to fulfil some basic requirements, including with regards to the location of the business/office.

Many business licensing processes are completed through a platform (i.e., Online Single Submission (OSS) managed by the Investment Coordinating Board (BKPM)).

7. How long does it take to establish a PMA company, and how fast can a PMA company start its commercial operations?

Upon completing the document/information requirements, the establishment of a company may take around two weeks until a PMA Company is deemed to be legally established.

Upon establishment, there are other steps required to ensure that a PMA Company can operate, such as obtaining the licensing as mentioned earlier and registering for the Tax ID process may, which vary depending on the business of the PMA company.

Some business licensing may require some time due to the requirements and timelines to process the application. As such, it is advisable to engage in proper planning and go through preliminary assessments of the business plan to ensure a smooth licensing process.

8. How can investors determine their choice of holding jurisdiction for a PMA company in Indonesia?

From an investment regulatory perspective, investors may take into consideration existing International Investment Agreements between Indonesia and another country. If investors do have a business presence (in the form of an affiliated company within the group) in certain countries that have an International Investment Agreement with Indonesia, investors may enjoy certain incentives for investment in Indonesia (e.g., stronger investment protection, higher foreign shareholding).

9. Do shareholders have limited liability status in a PMA company?

Yes, shareholders have a limited liability status in a PMA Company. They are not personally liable for any agreement made on behalf of PMA Company, including liable for any losses beyond their individual shareholding. This means that shareholders' liability is limited to the value of their investment within the PMA company unless certain legal requirements are not met. Under Law No. 40 of 2007 on Limited Liability Companies as amended by Law No. 2 of 2022 on Job Creation Law ("Company Law"), such limited liability may cease to exist if any of the following matters is substantiated:

- If a company is not properly established pursuant to the Company Law, any action conducted on behalf of the company cannot be recognised as the company's action. Therefore, the shareholders would be collectively liable for the debts incurred.
- A shareholder would be personally liable if she/he/it (a) directly or indirectly exploits the company in bad faith in her/his/its personal interest, (b) is involved in unlawful acts committed by the company, and (c) directly or indirectly uses the company's assets with the result that the company's assets become insufficient to pay off the company's debt.

10. What are the rights of shareholders in a PMA company?

Company Law provides several rights to the shareholders of a PMA Company, including voting rights in the general meeting of shareholders (unless the shares are issued without voting rights), rights to receive dividends and proceeds in the event of liquidation/winding up, and rights to information. In addition, Company Law has determined that the following matters must be approved by the shareholders through a general meeting of shareholders (with various required quorums), among other things:

- Amending the articles of association
- increasing/decreasing the shares capital
- appointing and dismissing the Directors and members of the Board of Commissioners
- approving extraordinary transactions, such as divestment or encumbrance of more than 50% of the company's assets
- approving dividends and annual financial statements
- approving reorganisation of the company.

11. What are the board/management systems of a PMA company, and what are their respective roles and authorities?

The Indonesian Company Law recognises the two-tier governance system, consisting of the Directors and the Board of Commissioners.

The Directors is the executive/management of the company, which has the general role and responsibilities of managing the day-to-day operations of the company and representing the company with any third party.

The Board of Commissioners is a supervisory board which has the general roles and responsibilities of supervising and providing advice to the Directors in the management of the company. The articles of association of a company may vest authority to the Board of Commissioners to give consent or assistance to the Directors of specified legal acts.

12. Can investors hold shares with preferential rights?

Shareholders can hold shares with certain preferential rights. The Indonesian Company Law recognises classifications of shares (e.g., shares with or without voting rights, shares with the special right to nominate members of the Board of Directors/Commissioners, shares with priority rights to receive dividends or liquidation proceeds, shares that after a definite period of time is withdrawn or exchanged for other classifications of shares).



Section Two

Operational Phase

Maintaining Foreign Investment in Indonesia

13. Is there any requirement to hire Indonesian employees in the PMA company?

In general, it is not specifically regulated. The need to have Indonesian employees is related to commercial needs or if the regulation requires having Indonesian expertise onboard (such as in construction services or shipping sector) or in the case of the PMA company if they are employing a foreigner which requires Indonesian employees to be hired for the transfer of knowledge requirement.

14. What is the status of the Indonesian employee?

The employment status is based on the employment arrangement between the employer and employee, which can be categorised in two ways:

- a. Temporary employment agreement (PKWT).
A PKWT is allowed for certain work that is temporary by nature that can be estimated to be completed within a foreseeable period, seasonal work, or any work that is related to the new product, new activity, or additional product that is still in an experimental or a try-out phase.
- b. Permanent employment agreement (PKWTT).
Any work that is continuous in nature should be entered between employers and employees with a PKWTT arrangement.

15. Can a PMA company employ expatriates in Indonesia?

Yes, a PMA company may employ expatriates. However, there is a list of positions issued by the Ministry of Manpower that cannot be assumed by expatriates. Generally, an expatriate cannot assume a position that handles a human resources matter.

Expatriates working in Indonesia must obtain a working and stay permit.

The Indonesian Manpower Law also requires that the employer employ Indonesian employees to act as a counterpart for each expatriate employee as a prerequisite to granting a work permit for an expatriate employee. In general, the Ministry of Manpower will require a minimum of one Indonesian counterpart for each expatriate.

16. Can a PMA company maintain non-Rupiah bookkeeping and use a non-Indonesian language?

For tax purposes, a company's books must be maintained in Rupiah, composed in Indonesian and stored in Indonesia. Certain taxpayers can use USD and English bookkeeping through an application or notification, which must be submitted, at the latest, three months prior to the start of the fiscal year.

In terms of language, all accounting books, records and financial statements should be prepared using the Indonesian language. A company is allowed to use other languages only after obtaining permission from the Ministry of Finance.

17. Is there a mandatory requirement to have audited accounts?

The following companies must have audited financial statements:

- a. companies involved in accumulating funds from the public (such as banks and insurance companies)
- b. companies issuing debt instruments
- c. publicly-listed companies
- d. state-owned companies
- e. companies with assets and/or turnover of at least IDR 50 billion
- f. as required by law.

18. Is there a foreign exchange control/restriction in Indonesia?

There is no exchange control on foreign currency. Investors can freely transfer foreign currency funds to or from Indonesia. However, the transfer of funds in foreign currency to and from abroad shall be subject to a reporting obligation to Bank Indonesia. There are also some reporting requirements to Bank Indonesia regarding offshore assets and liabilities.

19. What are the non-tax compliance requirements for a PMA Company?

In general, a PMA company will be required to perform reporting submissions to the relevant authorities following their business activity in Indonesia. In general, the reporting that will be needed to be performed by the company will cover the following:

- a. annual company financial reporting
- b. investment realisation reporting
- c. manpower and employee welfare reporting
- d. expatriate utilisation reporting
- e. company loan reporting
- f. foreign exchange and prudential principles reporting.

However, additional reporting may be required by the relevant authority, depending on the PMA company's business activities and classification (e.g., reporting to the Ministry of Industry for Industrial Activity, reporting to OJK for Financial Services Activities, etc.)

20. Are there any conditions for distributing dividends from a PMA company in Indonesia?

Dividends may be distributed from the net profits of the company that have been deducted with certain amounts allocated for reserves and can only be distributed if there is a positive balance of profits. Dividend distribution must be approved by the general meeting of the shareholders of the company. Companies may also distribute an interim dividend upon meeting certain requirements.

21. What are the investment facilities available for foreign investors?

In general, a newly established PMA company can enjoy facilities such as import facilities, tax holidays, tax allowances or investment allowances.

Import facilities

Investors engaged in certain businesses, including manufacturing, can enjoy import tax exemption on imported duty for capital goods and raw materials. This facility is often referred to as the Master List Facility.

Certain requirements must be met for the goods to be imported, which are the following:

- not yet produced in Indonesia
- has been produced in Indonesia but not in accordance with the specification required
- has been produced in Indonesia with the specification required above but does not meet the industry demand.

Tax holiday

The government may provide an avenue for a CIT reduction of 50% or 100% of the CIT due for 5–20 years from the start of commercial production, depending on the investment value. After the period for which the CIT reduction is granted, the taxpayer will be provided with a CIT reduction of 25% or 50% of CIT payable for the following two fiscal years, depending on the investment value.

This facility is provided to the companies that are listed as pioneer industries, which have a wide range of connections, provide additional value and high externalities, introduce new technologies and have strategic value for the national economy. Business sectors outside this list may also apply by fulfilling the self-assessed quantitative scoring system to justify their nature as a pioneer industry.

Tax allowance

The government may provide the following tax concessions for companies in certain designated business areas or in certain designated regions:

- a reduction in net income of up to 30% of the amount invested, prorated at 5% for six years of the commercial production, provided that the assets invested are not transferred out within six years
- accelerated depreciation and/or amortisation deductions
- extension of tax losses carried forward for up to ten years
- a reduction of the withholding tax rate on dividends paid to non-residents to 10% (or lower if treaty relief is available).

The applicant must meet the following high-level criteria to be eligible for the above tax facilities:

- high investment value or for export purposes;
- high absorption of manpower; or
- high local content.

Investment allowance

The government may provide a reduction in net income of up to 60% of the amount invested, prorated at 5% for six years of the commercial production, provided that the assets invested are not transferred out within six years. The applicant must meet the business line eligibility criteria, as well as absorb Indonesian manpower of at least 300 persons in the project.

Super deduction

The facility could be granted to certain businesses as follows:

- facility for labour-intensive industries in the form of a reduction in net income of 60% of the amount invested in the form of tangible fixed assets (including land utilised for main business), spread throughout a certain period
- facility for human resources development in certain competencies in the form of a reduction in the gross income of up to 200% of the amount spent for this activity
- facility for certain R&D activities in Indonesia in the form of a reduction in gross income of up to 300% of the amount spent for this activity.

22. How can a PMA company be eligible to conduct import activities? What licenses and procedures are required when conducting import activities?

A PMA company will have to secure an NIB since it will also serve as the following:

A. Importer Identification Number (Angka Pengenal Impor or API).

Depending on the business activity, there are two types of API issued by the OSS system, which are as follows:

- Producer Importer Identification Number (Angka Pengenal Impor Produsen or "API-P"). An API-P is required for the importation of machines/equipment, goods and materials to be used in the importer's production process; or
- General Importer Identification Number (Angka Pengenal Impor Umum or "API-U"). An API-U shall be granted only to companies that conduct the import of certain goods for trading purposes. The import of certain goods shall only be for groups/types of goods included in one section in the Classification System of Goods under the Customs laws and regulations. The applicable import license for a PMA company in distribution activity is an API-U.

B. Customs Identification Number (Nomor Identitas Kepabeanan/NIK), which serves as an Identification document for Customs and Excise authority relevant to the customs clearance process.

Certain goods may be subject to limitations and/or restrictions, and importation may not be permitted or may require additional import approval from the Ministry of Trade, which in some cases are issued based on the recommendation of the technical Ministries such as the Ministry of Industry, Ministry of Agriculture, etc.



Section Three

Exit Phase

23. What is the procedure involved in liquidating a PMA company in Indonesia, and how long does it take to liquidate a PMA company?

Generally, the procedures for (voluntarily) liquidation are as follows:

- a. Undertake a general meeting of shareholders approving the liquidation and nomination of the liquidator.
- b. Notify the creditors by announcing the liquidation and the plan for distributing assets in a newspaper and notification to the Ministry of Law and Human Rights.
- c. Cancel or revoke all company licenses (including business licenses and tax numbers – The Tax office will perform a tax audit for the purpose of the revocation of the tax number).
- d. Make payments to creditors and the distribution of liquidation proceeds to shareholders (if any).
- e. Undertake a general meeting of shareholders granting acquittal and discharge of the liquidator.
- f. Notify the Ministry of Law and Human Rights on the result of the liquidation. The Ministry of Law and Human Rights shall revoke the company's name from the Company Registry and deregister the company's status as a legal entity after receiving the notification.
- g. Announce the result of liquidation in a newspaper.

It can take approximately two years to complete a liquidation process.

24. What are the investors' obligations as shareholders of a liquidated company?

Shareholders shall have the obligation to appoint a liquidator to carry out the liquidation process in the general meeting of shareholders approving the liquidation. If there is no appointed liquidator, the Board of Directors shall act as the liquidator.

Creditors shall have the right to submit their claims within a period of two years as of the date of the liquidation announcement in the newspaper. Creditors may only file their claims if there are liquidation proceeds available for shareholders.

If the proceeds have been distributed to shareholders, the shareholders shall have the obligation to return the proceeds to the liquidator to satisfy the claims from the creditors in a proportional amount.

In the case the liquidation involves the termination of employees, it will be subject to the payment of the termination package, which amounts vary depending on the status of the employees, the service years as well as the reason for the liquidation.

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