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The Ease of Doing Business in Indonesia : What Foreign Investor Should Do

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Overview

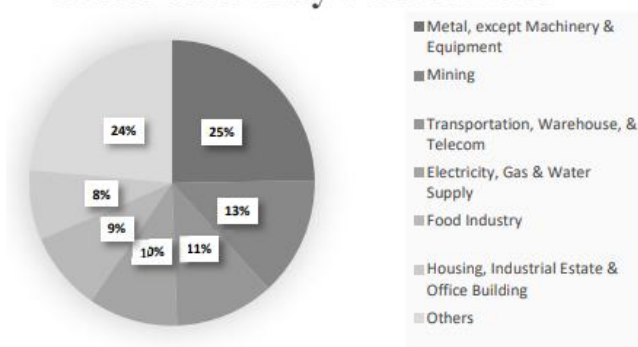
Indonesia has been one of the best performing investments throughout the world economic crisis that began in 2008 and continues to grow in the years since. Indonesia’s market capitalization is significantly smaller than the BRIC economies, which creates more room to grow for foreign investors.

In the second quarter of 2022, Foreign Direct Investment (“FDI”) into Indonesia (excluding investment in banking and the oil and gas sectors) significantly increased around 39.7 percent (YoY) to a fresh record high of IDR 163.2 trillion or USD 10.89 billion which resulting the highest rise in the past decade.

Metal, mining, transportation, warehouse, and telecommunication are the sectors that received the most FDI in 2021. Remarkably, investment in mining increased significantly by 90.4, compared to 2020. The food industry and metal industry also gained more attention and investment as their FDI rose 46.8% and 16.8% (YoY).

On 2 February 2021, President Joko Widodo announced new Presidential Regulation No. 10/2021 (“PR 10/2021”) related to investments in the business sector known as the Positive Investment List which included business activities that were closed, or partly open to foreign investment. Under this regulation, most of the foreign investment restrictions in the Negative List have been lifted.

Share of FDI by Sector 2021



Source: Investment Coordinating Board Indonesia (BKPM)

Based on the data that was provided by the World Bank regarding the Ease of Doing Business (“EoDB”), Indonesia is also currently ranked 73 out of 190 countries which shows that Indonesia is starting to facilitate the businessmen to obtain business license in Indonesia easier through the recent policies.

What Foreign Investor Should Do

According to the data above-mentioned, Indonesia is a new land of hope for foreign investor to expand their business and networking channel. It is supported by the fact that in January 2022, Indonesia's total population was 277.7 million, making Indonesia the world's fourth-most populous country led by the productive age (25 to 54 years) by 42.56 percent as the majority. Pursuing the business guide in Indonesia, hereby we are going to describe the measure to protect and mitigate the legal risks as below:

1. Choosing Your Business Entity

Based on article 9 section (9) and (10) Regulation of the Investment Coordinating Board No. 4/2021 ("**RBKPM 4/2021**"), there are two business entities that are permitted for foreign investors in Indonesia which are Foreign Investment Limited Liability Company ("**PT PMA**") and a Representative Office ("**KPPA**"). Several things differentiate these two business entities which may be seen in figure 1.1 below:

	PT PMA	KPPA
Allowed activities	Not limited which includes all business activities as approved by the Investment Coordinating Board (" BKPM ")	Limited to local representation, supervising, advisory, and market research only
Foreign ownership	Foreign ownership varies between 0% - 100% depending on the Positive Investment List	No restrictions
Minimum capital	IDR 10 billion (paid up capital at least 25% of investment plant)	No requirement
Goals	Engage in commercial activities in Indonesia	Engage in market research, supervising and networking.

Choosing PT PMA might be beneficial for the foreign investors since the liability is limited to the shares allotted to him. However, before embarking on the process of incorporation of PT PMA, the foreign investor must understand that according to the Indonesian Company Law ("**Law No. 40 of 2007**") as amended by Indonesian Job Creation Law ("**Law No. 11 of 2020**"), every limited liability company in Indonesia requires at least two shareholders and consist of at least one commissioner and one director.

2. Choosing Your Business Entity

In Indonesia, IP rights are regulated by several laws and their implementing rules which are collectively known as the IP laws such as:

IP Rights	Applicable Act
Trademark	Law No. 20 of 2016 as amended by Article 108 Law No. 11 of 2020
Patents	Law No. 13 of 2016 as amended by Article 107 Law No. 11 of 2020
Copyright	Law No. 28 of 2014
Industrial Designs	Law No. 31 of 2000
Trade Secrets	Law No. 30 of 2000
Layout Designs of Integrated Circuits	Law No. 32 of 2000

In order to ensure the government will grant or enforce IP rights, the Ministry of Law and Human Rights (“**MOLHR**”) through the Directorate General of Intellectual Property (“**DGIP**”) accepts, examines, grants and administer IP applications.

Having said that, foreign investors shall record their IP rights including their license so that they might be acknowledged as IP holders to give full protection to their business.

3. Choosing Your Business Entity

Choosing a strategic business location might help the business to grow and foster so that the foreign investor might experience the business atmosphere and long-term success for their future business.

It shall be noted Indonesia has the sixth-largest special economic zone in the world and consists of several main activities such as:

- a) Production and processing;
- b) Logistics and distributions;
- c) Research, Digital Economy and Technology Development;
- d) Tourism;
- e) Energy Development;
- f) Education;
- g) Health;
- h) Sport;
- i) Financial Services;
- j) Creative Industry;
- k) SEZ Development and Management;
- l) Provision of SEZ Infrastructure; and
- m) Other Economic Activities.

By 2022, it is estimated that 18 special economic zones spread throughout Indonesia which may be seen in the following details:



Sources: Republic of Indonesia National Council for Special Economic Zone

Conclusion

Indonesia is a perfect country to invest in for the foreign investor, however, it is very important for the foreign investor to protect their business in Indonesia by mitigating its risks. To mitigate the risks, risk management is needed.

Risk management may consist of several activities such as identification, strategic plan, action, advisory, and evaluation of issues that probably affect the company in the future. So, collecting and understanding as much information, before incorporating a business in Indonesia, might be helpful.

We, Dwinanto Strategic Legal Consultant (“**DSLCL**”), understand all applicable laws and the implementing rules in Indonesia that are related to Commercial Law and General Corporate. Having said that, DSLCL is ready to assist your needs and secure your business transaction in the future.



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