



DSLC

Failed to Comply?

Foreign Investor Must Understand
This Before Incorporate a Business
in Indonesia

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Overview

Indonesia's strong economic growth and favorable demographics make it a great country for investors. However, there are several risks that investors must be aware of before committing any capital and/or incorporating a business organization in Indonesia such as risk compliance.

In Indonesia, the most frequent cases related to the foreign business organization occurred because of the lack of understanding of: (a) Tax compliance; (b) Employment compliance; (c) Organization structure compliance; (d) Shareholders compliance; and (e) Licensing compliance.

In order to incorporate business organization, the foreign investors shall ensure that those kinds of risks might be mitigated to avoid potential losses arising from the business organization activities that will be carried out in the future.

Incorporate Business Organization

In the perspective of practical views, before incorporating business organization in Indonesia, the foreign investors shall lend an ear and aware on several things such as:

I. Type of Business Organization

It shall be noted that for foreign investors who would like to form a business organization in Indonesia, it must be in the form of a Limited Liability Company which is locally referred to as a PT PMA [Ref. Art. 5 Paragraph 2 Law No. 25 of 2007].

Following the enactment of Indonesia's Omnibus Law, before incorporate a PT PMA, the foreign investor shall refer to Indonesia's Positive Investment List under Presidential Regulation No. 10 of 2021 for the better understanding since this list has outlined about the foreign ownership percentage share, entity types, business sectors, and business lines that open to the foreign investor.

II. Procedures on Forming Business Organization

In order to incorporate a business organization for foreign investors, there are several circumstances that shall be followed inter alia in:

- a. Ensure the completeness of constating documents such as Deed of Establishment, Articles of Incorporation, Articles of Association, Certificate of Incorporation from Minister of Law and Human Rights, and Company Tax Identification Number.
- b. Meet the investment and capital value requirements to obtain an Investment License as regulated under the Regulations of Investment Coordinating Board No. 4 of 2021. However, in practice, since the Government of the Republic of Indonesia focuses on enhancing the ease of doing business, there are several circumstances which allow the foreign investor to set the authorized capital and paid-up capital below the minimum amount that required by the regulation such as Incorporate the business organization in Special Economic Zone.
- c. Possessing Business Identification Number which is locally referred to as NIB and other business license which may be applied through the Online Single Submission (“OSS”) or Coordinating Ministry of Investment.

III. Rights and Duties

When foreign investors form a business organization, understanding the rights and duties are really important. In order to run a business organization, the foreign investors have to ensure at least the rights and duties as follows will be implemented well:

- a. Organization structure

Before incorporating business organization in Indonesia which is PT PMA, the foreign investor must ascertain that their company has to regulate about: (a) General Meeting of Shareholders; (b) Board of Directors; and (c) Board of Commissioners, with the rights and duties as follows:

General Meeting of Shareholder, has the rights and duties to: (1) appoint and discharge the Board of Directors and Board of Commissioner; (2) change the business activities; (3) deduction or increase the capital; (4) share transfer; (5) change of company status from private to public or vice versa.

Board of Commissioners, has the rights and duties to supervise and monitor the performance of the Board of Directors, ensuring that every activity and decision is carried out in accordance with the company’s objectives.

Board of Directors, has the rights and duties to manage and represent the company.

b. Foreign Worker Permit

In practical, the cases that often occurred in a foreign business organization is regarding to the compliance on recruiting the foreign worker. Before recruiting the foreign worker, the business organization must obtain the Ratification of the Plan for the Use of Foreign Workers which is known as RPTKA from the Ministry of Manpower.

Besides, it is necessary to ensure that the foreign workers are only be employed for a certain time and a certain position.

c. Tax

Other duties that must be taken care by the foreign investor when setting up a business organization in Indonesia is regarding the compliance on taxes. In general, the tax obligation that must be carried out by a business organization is the obligation to report the Income Tax Return (“SPT PPh”) and Value Added Tax (“PPN”)

IV. Property Ownership

Regarding to the Right of foreigner nationals to own land and buildings in Indonesia, the rights that granted for foreign nationals is to the extent of use and lease. Hereby you may see the type of rights which will be granted to the foreign nationals along with the term as follows:

Type of Rights	Term
Land under Rights of Use (“Hak Pakai”)	30 (thirty) years, extendable for 20 (twenty) years, and renewable for 30 (thirty) years
Land under Right of Use over freehold title under an agreement (“Hak Pakai atas Perjanjian”)	30 (thirty) years, extendable for 20 (twenty) years, and renewable for 30 (thirty) years, according to an agreement with the holder of land title
Land under Right of Use derived from a Freehold Title (“Hak Pakai dari Hak Milik”)	30 (thirty) years, extendable for 20 (twenty) years, and renewable for 30 (thirty) years
Land under Rights of Use derived from a Right to Build (“HGB”)	Granted for the remainder of the term of the Right to Build (HGB), extendable for 20 (twenty) years, and renewable for 30 (thirty) years
A Right of Use over an Apartment Units (“Hak Pakai atas Sarusun”) which was first obtained from the holder of the new Freehold Title	30 (thirty) years, extendable for 20 (twenty) years, and renewable for 30 (thirty) years
A Right of Use over an Apartment Units (“Hak Pakai atas Sarusun”) derived from a Freehold Title of the Apartment Unit (“Hak Milik atas Sarusun”)	Granted for the remainder of the term of the Freehold Title of the Apartment Unit, extendable for 20 (twenty) years, and renewable for 30 (thirty) years

Other than that, the foreign investors are also able to own the Intellectual Property by registering their Intellectual Property to the Directorate General of Intellectual Property (“DGIP”), Ministry of Law and Human Rights of the Republic of Indonesia (“MOLHR”).

Conclusion

As a foreign investor who would like to establish a business organization in Indonesia, establishing a business organization according to the procedure and carrying out obligations according to the law is truly important in order to mitigate the risks that will arise in the future.

In order to prevent the failure to comply with the prevailing laws, there are four components that must be understood by the foreign investors when setting up their business which are: (1) the Type of Business Organization that is allowed for foreign investor; (2) the procedure on forming the business organization; (3) the rights and duties that must be carried out by the business organization; and (4) the right of property which can be owned by the foreigners.

We, Dwinanto Strategic Legal Consultant (“DSLCL”), believe that well-planned and detailed risk mitigation processes will offer a high level of success in each and every project and we are ready to assist the foreign investors in incorporating their business organization in Indonesia.



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