

GUIDE TO DOING BUSINESS IN INDONESIA

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A. LEGAL SYSTEM

The history of Indonesian legal system is closely related to the Dutch legal system. During the colonial period, the Netherlands-Indies Government implemented the *concordantie* principle in the legal sector throughout the territory of Indonesia. On the basis of this principle, virtually every law that was passed by the Netherlands parliament would take effect in the Indonesian territory a few years later, with minor changes if necessary. When Indonesia became independent, its 1945 Constitution in Article II of the Transitory Provisions stipulated that all laws and legislation existing under the Dutch colonial administration automatically became the laws and legislation of the Republic of Indonesia, until repealed, revoked or amended or found to be contradictory to the Constitution.

As a consequence, the regulations governing business in Indonesia after independence remained the same as the legislation enacted in colonial times, such as parts of the Civil Code (*Burgerlijk Wetboek*), the Commercial Code (*Wetboek van Koophandel*) and the Bankruptcy Ordinance (*Faillissement Verordening*), until amended in by new laws introduced in 1960-2004. In the 1960s, the government of Indonesia enacted several laws intended to foster investment, such as the Basic Agrarian Law (*Hukum Agraria*) and the Foreign Investment Law (*Hukum Penanaman Modal Asing*). In the period of 1980-2000, major overhauls of the laws governing Indonesian business practices resulted in the enactment of several more modern laws, such as the Mortgage Law, the Company Law, the Capital Market Law, the Bankruptcy Law, the Fiduciary Transfer Law, and the Arbitration Law as well as several Intellectual Property laws including laws on Copyrights, Patents, Marks, Industrial Designs, Integrated Circuits, and Plant Varieties.

Similarly, the rules governing commercial litigation procedures under Indonesian law are found in the Indonesian Civil Procedure Law derived from the Dutch colonial civil procedure codes (*Herziene Indonesisch Reglement* (“HIR”) and *Rechtsreglement Buitengewesten* (“RBg”). The Indonesian judicial system is organized into three levels. The lower court is the District Court (*Pengadilan Negeri*) established in all districts and municipalities (*Kotamadya* or *Kabupaten*) in Indonesia. The first appellate court is the High Court (*Pengadilan Tinggi*) established in all provinces in Indonesia. The highest court is the Supreme Court (*Mahkamah Agung*). Indonesian civil law, unlike common law systems does not adhere to strict doctrines of precedent; each case must be determined on its own facts and merits, although consideration may be given to academic theories and prior decisions in similar cases, especially decisions of the Supreme Court.

In addition to the courts of general jurisdiction, Indonesia also has separate three-tiered structures or courts for handling disputes in administrative law, military law and Islamic family law. Since 1998, a number of specialized courts have been added to the Indonesian judicial system, including the Commercial Court, handling bankruptcy and intellectual property matters, the Anti-Corruption Court, the Human Rights Courts, and

special tribunals for tax, labor, and fisheries disputes. Based on recent amendments to the Constitution, a Constitutional Court was established in 2003 and a Judicial Council is currently in formation. The Indonesian Supreme Court in 2004 began implementing a set of blueprints of comprehensive judicial reform and has earned significant levels of support from the Indonesian public and the international community for this effort.

B. DIRECT FOREIGN INVESTMENT

Direct foreign investment in Indonesia is governed by Law Number 1 of 1967 on Foreign Investment as amended by Law Number 11 of 1970 (“Foreign Investment Law”). Under these laws, the Indonesian government requires foreign investors who want to operate in Indonesia to form a limited liability company, which is commonly referred to as foreign investment company or PMA (*Penanaman Modal Asing*) company. The Investment Coordinating Board (commonly referred to as “BKPM”, *Badan Koordinasi Penanaman Modal*) is the Indonesian government agency which issues investment licenses. However, other Indonesian government agencies issue import licenses and permits to employ non-Indonesian workers. In addition, BKPM does not issue licenses for investments in banking, financial institutions, insurance, and oil and gas as these are issued by other government agencies under separate legislation. For example, foreign investment in banking, insurance and stock broking is regulated by the Department of Finance, while foreign investment in the oil and gas sector must be approved by the Department of Mines and Energy. Since the bulk of foreign direct investment in Indonesia is regulated by the Foreign Investment Law, the following focuses on the rules and regulations that most investors will encounter under this law. Investment through acquiring shares in a listed company will also be discussed briefly at the close of this section.

An important feature of the Foreign Investment Law is the guarantee that the Indonesian government will not nationalize a foreign investment or revoke the investor’s rights to control a foreign investment, except where it is declared under Indonesian law to be in the national interest to do so and then only upon payment of mutually agreeable compensation determined in accordance with principles of international law. This guarantee is accompanied by assurances that the foreign investor will have the authority to appoint the management of the foreign investment company and the right to repatriate capital in the form of after-tax profits, reimbursements of expatriate manpower expenses, depreciation of fixed assets, and other reasons. The Foreign Investment Law also provides for arbitration of investment disputes that may emerge between investors and the government, allowing for such disputes to be submitted to international arbitration under rules of the International Convention for Settlement of Investment Disputes (“ICSID”).

Business Activities Open for Foreign Investment

Although the Foreign Investment Law is intended to encourage foreign direct investment in Indonesia, it requires that the Indonesian government must regulate the fields of business activity that are open to foreign investment and set the priorities and any special conditions to be placed on foreign investments. The Foreign Investment Law also allows the Indonesian government to determine that certain areas are closed to further investment. It also stipulates that industries relating to national defense are to remain totally closed to foreign investment and that certain sectors that are important to the State and affect the livelihood of the Indonesian population cannot be undertaken by foreign investors alone (i.e., without local participation). These sectors are:

- harbors;
- production, transmission and distribution of electric power to the public;
- telecommunications;
- shipping;
- aviation;
- drinking water;
- public railway;
- atomic reactors; and
- mass media.

Based on provisions of the Foreign Investment Law, the Indonesian government from time to time has issued a list of desired investments and a list of fields of business activity which are closed to further foreign investment. The list is commonly called the Negative List for Investment (*Daftar Negatif Investasi*). In preparing the Negative List, there has been a concerted effort to keep the number of restricted sectors to a minimum and to remove numerous conditions that previously had been imposed. This approach has been welcomed by foreign investors and has significantly opened many sectors of business activity to new investments, both foreign and domestic. The most recent Negative List was issued in 2000.

The Negative List demonstrates the willingness of the Indonesian government to attract more foreign investments, after the substantial declines in investment that followed the financial crisis that hit Indonesia and Asia in general in the late 90s. In addition, the gradual, but steady, process of recovery, improvements in general public security, and other actions directed to make Indonesia more attractive for foreign investment, have contributed to an increasing trend of foreign investment into Indonesia. Indonesia's successful, democratic elections in 1999 and 2004, including direct election of the President for the first time in Indonesia's history in 2004, and the growing effectiveness of the national institutional reform movement have also contributed significantly to creating the basis for a more welcoming investment climate in Indonesia.

Based on recent liberalization in the investment sector, all business sectors are to be open to foreign direct investment, with the following exceptions:

- ❖ business sectors which are absolutely closed to foreign investment (see **Annex 1**);
- ❖ fields of activity referred to as "strategic activities" which are significant for the State, which are subject to a maximum foreign shareholding of 95%, including:
 - public harbors and shipping;
 - transmission and distribution of electric power for public use;
 - telecommunications;
 - aviation, public drinking water;
 - public railways;
 - nuclear power generation, etc.

- ❖ business sectors open to foreign investment provided that it is made through a joint venture with domestic shareholder(s) (see **Annex 2**);
- ❖ business sectors open to foreign investment under certain specified conditions, (see **Annex 3**);
- ❖ business sectors reserved for small-scale businesses, which are closed to foreign investment (see **Annex 4**); and
- ❖ fields of business open to medium and large scale enterprise, are open to foreign investors in cooperation with a small scale enterprise under the so called "partnership (*kemitraan*) program"(see **Annex 5**).

Divestment Rules

The Foreign Investment Law, as implemented by a Government Regulation enacted in 1994, requires foreign shareholders divest part of their share ownership to an Indonesian citizen or legal entity within 15 years from the date the PMA company obtains its permanent operating license from BKPM. The percentage of divestment required has not been specified by the Indonesian government, but divestments have been approved by BKPM where as little as 1% has been divested.

Minimum Capital/Investment

BKPM has not set a minimum amount of total investment, capital or equity necessary for a foreign investment project to be approved. BKPM will consider the likely capital requirements for investments in the business sector applied for in determining whether a proposed investment is adequately capitalized. Generally, investments in the service sectors are approved at much lower levels of investment than investments in manufacturing or other industries with high equipment needs.

Establishment of a Foreign Investment Company in Indonesia

In a nutshell, the procedures for establishing a PMA company are as follows:

- the foreign investors first submit a Model I PMA application to BKPM (as attached in **Annex 6**), or other government agencies appointed by the Indonesian government for processing the investment application;
- the foreign investors execute the articles of association of the PMA company, after having obtained the approval from BKPM. They must also process the articles of association with the Department of Law and Human Rights, and process other administrative procedure under the Company Law;
- the PMA company processes necessary corporate licenses (including domicile permit, company registration, importer licenses, master lists of equipment and raw material for import privileges, taxpayer identification number, work and stay permits for

expatriates, specific licenses required for specific business activities, and other licenses).

The whole process ordinarily takes up to 4 – 6 months until the PMA company obtains all the licenses necessary to operate in Indonesia.

Acquiring Shares of an Indonesian Listed Company

Indonesian capital markets are supervised by the Capital Market Supervisory Board (*Badan Pengawas Pasar Modal*, “BAPEPAM”). The Indonesian Capital Market Law, Law Number 8 of 1995 and its implementing regulations (including Rules of BAPEPAM) provide specific requirements for acquiring shares in an Indonesian listed company.

The acquisition of shares of an Indonesian listed company can be made inside or outside the bourse. Any party who owns 5% or more of the shares of a public company must report to BAPEPAM within 10 days as of the date of the transaction for such ownership.

Any party (including a foreign investor) who wishes (i) to acquire shares for 25% or more, (ii) to control, directly or indirectly, the appointment and the dismissal of directors or commissioners and/or (iii) to control the amendment of the articles of association of an Indonesian listed company (“Target Company”) shall conduct a tender offer for the remaining shares of the Target Company. The tender offer must be made in at least two Indonesian language daily newspapers, one of which must have national circulation.

A prospective controlling shareholder shall regularly inform the Target Company, BAPEPAM, the relevant stock exchange, and the public about all negotiations which could lead to the take-over of the Target Company.

Duration

The Foreign Investment Law provides that a foreign investment license will expire 30 years from the date the PMA company commences commercial production.

However, an Indonesian regulation issued in 1994 states that this 30-year term may be extended so long as the PMA company continues to carry out its business for the benefit of the national economy and development. In the absence of evidences that the PMA Company has continued its business, the provisions of Law Number 6 of 1968 on Domestic Investment will apply. The Domestic Investment Law states that when the 30-year time limit is reached, the foreign investor must transfer its shares to an Indonesian investor, and will be subject to mandatory liquidation if the foreign investor fails to do so. BKPM began ameliorating this rule by stating that expansion permits and diversification permits granted to existing foreign investment companies would also be valid for 30 years from the date of the permit.

C. REPRESENTATION IN INDONESIA

As part of the growth in global economic activity, a great number of companies have expanded their business operations to include operations and offices in foreign countries. For the purpose of maintaining close supervision of the management of foreign business activities, many companies open a representative office in other countries even if they do not have production facilities located in those countries.

In Indonesia, a representative office may not own or maintain production facilities or operational activities, and therefore, cannot accept orders, participate in tenders, sign contracts or engage in the importation of goods.

A representative office in Indonesia may be an Indonesian company, an Indonesian individual, or an expatriate individual. If the representative office is to be headed by an expatriate, a work permit for the representative must be applied for together with the application for the representative office license.

Representative Offices Licensed by BKPM

A foreign corporation can open a representative office in Indonesia licensed by the BKPM by first submitting the application form to obtain the business permit of representative of foreign trading company in Indonesia (as attached in **Annex 7**).

Representative offices which require a BKPM license are involved in at least one of the following activities:

- a representative office that manages the interests of the affiliated foreign corporation in Indonesia or other countries; or
- a representative office that is established to explore or prepare for the establishment or development of investment activities in Indonesia or other countries.

Representative Offices Licensed by the Department of Industry and Trade

A representative office under the Department of Industry and Trade (which is currently being reorganized into two separate departments, of Industry and of Trade, respectively) is intended to promote the exportation of goods from or the importation of goods into Indonesia. As such, there are two types of representative office which are as follows:

- representative office as buying agent; and
- representative office as selling agent.

A representative office that acts as a buying agent is usually appointed by its principal outside Indonesia to survey the Indonesian market for products or raw materials produced in Indonesia. Under recent reforms, such a buying agent may participate

directly in the export of goods from Indonesia. A representative office that acts as a selling agent, on the other hand, undertakes promotional activities for the goods sold in Indonesia and also provides support for the utilization or importation of the goods. The selling agent may not, however, participate directly in the importation of goods into Indonesia, which must be done by an Indonesian entity or a PMA company holding the requisite importer license.

The Department of Industry and Trade will only grant representative office licenses to companies trading in tangible goods, not to companies engaged in the provision of services.

Foreign Bank Representative Offices

A foreign bank can open a representative office in Indonesia to act as a liaison office between the foreign bank and its customers in Indonesia. This type of representative office is regulated and monitored by Bank Indonesia, the Indonesian central bank. As a liaison office, the representative office cannot conduct banking activities in Indonesia, and is only allowed to:

- provide information to third parties within Indonesia on requirements and procedures for establishing relations with its principal office/branch offices outside Indonesia
- assist its head office/branch offices outside Indonesia in supervising credit collateral in Indonesia;
- act as proxies in making contact with institutions/agencies to represent the interests of its head office/branch offices outside Indonesia
- act as supervisors of projects within Indonesia which are partially or wholly financed by its head office/branch offices outside Indonesia;
- undertake promotional activities;
- provide information on Indonesian trade, economic matters, and finance for foreign parties or *vice-versa*; and
- assist Indonesian exporters in obtaining market access outside Indonesia through international network of banks affiliated with the representative office or *vice-versa*.

Not all foreign banks can open a representative office in Indonesia as Bank Indonesia will only give the approval to the foreign banks with sufficient assets to be listed in the world's top 300 banks by asset size.

As a follow up to the amendment on the Law on the Central Bank (Law Number 23 of 1999 concerning Bank Indonesia) and the soon-to-be-issued Law on the Financial Services Authority, it is anticipated that there will be changes in the nature and permitted activities of bank representative offices.

Representative Offices in the Field of Construction Services

Foreign construction companies that intend to engage in construction activities in Indonesia can open a representative office in Indonesia to scout for potential projects.

The services to be provided by the foreign construction company include consulting services in construction, or construction activities. This representative office can conduct the following activities:

- explore market for possible consulting or construction services;
- participate in tenders;
- submit proposals; and
- conduct construction services to its completion.

The Department of Public Works issues the license for this representative office for a period of 3 years which can be extended.

If the representative office of the foreign construction company is successful in obtaining a construction project in Indonesia, it must form a joint operation with an Indonesian company to undertake the project. In most cases, only foreign construction companies that have a licensed representative office in Indonesia will be eligible to participate in public sector tenders.

D. EXCHANGE CONTROL

Although there are no strict foreign exchange controls currently in place in Indonesia, the Indonesian government has issued several regulations on the monitoring of foreign exchange traffic and places certain restrictions on the holding of Rupiah by non-residents. This monitoring measure mainly comes in the form of reports on the foreign exchange flow in and out of Indonesia. The latest foreign exchange reporting requirement was issued by Bank Indonesia in 2003, which is an implementation to Law Number 24 of 1999 concerning Foreign Exchange Flow and Exchange Rate System.

These monitoring measures allow Bank Indonesia to keep track of foreign exchange flows between residents and non residents, including the movement of foreign financial assets and foreign financial liability between residents.

Under the latest regulation, the obligation to report applies to the following companies:

- the company which conducts business activity other than (i) banking business and (ii) non-banking financial institution;
- the company that has a total asset of at least Rp 100 billion or has a turn over of at least Rp 100 billion; and
- the company that conducts an activity of foreign exchange flow, which activity is not conducted through local banking or non-banking financial institution.

The reports, submitted to Bank Indonesia, include:

- report on the transactions which affect foreign financial asset and/or liability; and
- report on the position of foreign financial asset and/or foreign financial liability at the end of reporting period.

The sanctions for not complying with the reporting obligations to Bank Indonesia include fines or revocation of the business license.

Indonesia has also recently established an Anti-Money Laundering Agency (“PPATK”) with broad powers of investigation and prosecution to prevent international money laundering activities.

E. EMPLOYMENT

The development of Indonesian employment regulations is progressive and further changes are expected in the coming years. Due to the active involvement of various NGOs, the awareness of Indonesian laborers has also increased during the last 10 years.

Principally, labor matters in Indonesia are regulated in the following laws:

- Law Number 13 of 2003 concerning Manpower;
- Law Number 22 of 1957 concerning Settlement of Labor Disputes and Law Number 12 of 1964 concerning Employment Termination in Private Companies, both of which will be revoked on January 14, 2006 upon the effectiveness of Law Number 2 of 2004 concerning Industrial Labor Relationship Dispute Settlements in connection with Government Regulation in lieu of Law Number 1 of 2005 concerning Postponement of Law Number 2 of 2004;
- Law Number 1 of 1970 concerning Work Safety;
- Law Number 7 of 1981 concerning Mandatory Report of Manpower;
- Law Number 3 of 1992 concerning Worker Social Security;
- Law Number 21 of 2000 concerning Labor Unions;
- Law Number 11 of 1992 concerning Pension Funds.

Employment Agreements

Employment agreements in Indonesia are categorized into:

- Employment Agreements for a **definite period** in which an employment relationship has a definite term or based on the completion of a certain job (e.g., employment between a company and an interim worker; or a contract in which a company employs someone to set-up a computer network)
- Employment Agreements for an **indefinite period** in which the employment agreement does not have specific term or require a completion of a certain job.

Labor Union

A company with ten or more employees may have a Labor Union, and more than one Labor Union may be established at a company. An employee cannot become a member of more than one Labor Union in a company.

Minimum Wage

The term minimum wage in Indonesia relates to the Regional Minimum Wages that vary from province to province, with each province having the authority to regulate its own minimum wage. Regional Minimum Wages are determined by the Department of Manpower and are subject to the annual review by the Employers Association.

Company Regulations

Every company in Indonesia employing at least 10 persons is required to have a set of "Company Regulations" (*Peraturan Perusahaan*) which state in detail the terms and conditions of the employment and the rules of conduct to be observed by the employers. The Company Regulations must be approved by the Regional Department of Manpower where the Company is domiciled, and once approved, are valid and binding upon both the employer and the employees for a period of 2 years. Approval for an extension to the validity of the Company Regulations must be obtained every 2 years and any amendments must also be approved by the Regional Department of Manpower.

Collective Labor Agreements ("CLA")

A CLA is an agreement between a Labor Union registered with the Department of Manpower and the Employer. The CLA generally contains the following:

- parties to the agreement;
- the terms of employment;
- wage system;
- agreed medical and health services;
- rights to vacation leave;
- the benefits due when an employee is injured while on duty;
- provisions on amending the CLA; and
- procedure for the settlement of a difference of opinion or a dispute between an employer and its employees.

In a company which has had a CLA, the CLA cannot be replaced by the Company Regulation. A company having a CLA is not obliged to have the Company Regulation.

In the event that the Labor Union wants to negotiate a CLA with an employer, the employer is obligated to do so.

Bipartite Cooperative Agency ("BCA")

A BCA will be established at every company or enterprise that comprises 50 or more employees as an initiative of both the employees and the relevant company representatives. Essentially, the BCA will serve as a communication forum to ensure timely communication between its members and to assist in the resolution of disputes by facilitating discussion, debate and consensus building. The BCA will be required to meet at periodic intervals or as required to ensure that the above duty is met.

Working Hours

An employer is not permitted to make its employees perform work for more than 7 hours a day for 6 work days per week or 40 hours a week. However, the total working hours may be distributed into 5 work days per week with no more than 8 hours work per each day. Employees who have to work for more than 40 hours per week are entitled to receive overtime payment. The law also stipulates that an employee must be given a meal if he or she works overtime for 3 hours or more .

Employee Training Programs

Indonesian companies employing expatriate workers are required to implement training programs to ensure the transfer of knowledge. The Skills and Development Fund in the amount of USD 1,200 per year for each expatriate employee is to be paid to the Department of Manpower.

Allowances

Employees are entitled to an annual allowance which normally equals one month's salary at the time of the Idul Fitri (*Hari Raya Lebaran*) or Christmas holidays. Maternity leave must be granted for 3 months with salary fully paid. In addition, it is a common practice to provide other allowances or benefits, such as meal allowances and transportation allowances. All allowances are treated as part of salary for tax purposes and are deemed to form part of the basic wage for purposes of termination payment calculations.

Social Security For Manpower

An employer with 10 employees or more or having a payroll of at least one million rupiah a month is obligated to insure its employees, including expatriate employees, in the Social Security for Manpower (*Jaminan Sosial Tenaga Kerja, "Jamsostek"*) program.

The *Jamsostek* program covers:

- Occupational Accident Security;
- Death Coverage;
- Old Age Security; and
- Health Maintenance Security.

Pension Funds

A company in Indonesia can provide a pension scheme for its employees by way of:

- a special fund set aside for such purpose administered through a separate accounting or a separate legal entity for the Pension Fund set up and controlled by the Employer ("Employer's Pension Fund");
- a pension scheme administered through an independent pension fund financial institution ("Financial Institution Pension Fund"); or
- any employer's Pension Fund in which the contributions come only from the Employer, which are determined by a specific formula related to the Employer's profits ("Profit Based Pension Fund").

The Pension Fund Law provides that the pension programs can be conducted in the form of Defined Benefit Plans or Defined Contribution Plans. The Defined Benefit Plans are pension programs under which the benefits are determined by the pension funds regulations. Defined Contribution Plans are pension programs where contributions are determined under the pension fund regulations and all contributions as well as the proceeds of investments are booked as pension benefits.

Obligation to Report on Manpower

Any employer with 6 or more employees is obligated to report in writing certain details concerning its manpower to the Minister of Manpower within 30 days from establishment of its business or any significant change in its activities. This report must be filled annually and failure to file will result in the liability of the employer or manager for an imprisonment of up to 3 months or a fine of up to one million rupiah.

Strike

Every employee or labor union has a right to strike. However, any strike action must be conducted within the prevailing laws and regulations with respect to strike action. Strike will be considered as illegal if certain conditions as provided by the laws and regulation are violated.

In the company which serves public needs or which activities endangering to human life, the strike action conducted by the on-duty employees is classified as an illegal strike and such employees will be marked as absent from the place of work.

Employment Termination

If termination cannot be avoided, a permit is required for either the termination of an individual employee or mass termination. The government entities which can issue such a permit are the Regional Committee for Settlement of Labor Disputes (*Panitia Penyelesaian Perselisihan Perburuhan Daerah* – "P4D") and the Central Committee for Settlement of Labor Disputes (*Panitia Penyelesaian Perselisihan Perburuhan Pusat* – "P4P"). Termination by an employer is null and void by operation of law if it is done without a permit from the P4D or P4P, except for certain cases such as termination in definite period contract.

Termination of employment by the employer with the permission of the P4D or P4P will have the legal consequence that a severance allowance must be paid to the terminated employee which consists of three elements:

- Severance Pay;
- Service Appreciation Pay; and
- Compensation.

In January 2004, the Government enacted Law Number 22 of 2004 on Industrial Labor Relationship Dispute Settlements, that addresses the issues that concern the termination of industrial employment relationships. Although promulgated in 2004, this law will take its effect only on January 14, 2006. As a result, at the latest on January 14, 2006 both the P4D and P4P must have been liquidated and replaced by another tribunal that comprises of judges who are representatives of both the legal and industrial spheres.

Based on Law Number 22 of 2004, before an industrial dispute is brought to the special tribunal, initial efforts to settle the dispute must be made by way of the following:

- Bipartite negotiation;
- Mediation;
- Conciliation; and/or
- Arbitration.

If the initial efforts are successful and a settlement is reached by way of any of the abovementioned means, the disputing parties who have reached a mutual settlement agreement must execute the agreement in writing in the form of a deed, and have the deed registered with the local tribunal.

If the efforts fail to produce a mutually agreed amicable settlement by way of the above, the dispute is to be brought before the specific tribunal as meant by the law.

Expatriate Employees

Indonesian companies, whether national companies of foreign investment companies are permitted to employ expatriate employees as a Director, Commissioner or certain other position in the company that open for expatriate employee. A company who would like to employ expatriate employee must provide necessary education and training programs for Indonesian employees who are expected to replace the expatriates.

Prior to employing expatriate employees, a company must first submit an application on Foreign Manpower Utilization Plan or RPTKA and obtain approval thereof. The RPTKA determines the number of expatriates that will work for the company, their term of employment and the functions in which they are to be employed. It serves as a basis for the entry of expatriates and the issuances of expatriates working permits. The RPTKA may be granted for a maximum period of 5 (five) years and may be extended for another 5 (five) years at the maximum.

The application for RPTKA must include documents of the company, among others:

1. RPTKA form which has been filled in;
2. the business license of the company;
3. copies of the deed of establishment and legalization as a legal entity;
4. a copy of the Certificate of Domicile;
5. a copy of the organizational chart of the company;
6. a copy of the appointment letter concerning the appointment of Indonesian employees to be the assistant(s) of the expatriate;
7. a copy of the company's Mandatory Manpower Report.

After the RPTKA application has been approved, the expatriate who will be employed by the Company must subsequently obtain a Visa for Limited Stay or VITAS issued by the representative of the Republic of Indonesia located outside of Indonesia (e.g., Indonesian embassy or consulate).

To obtain VITAS as mentioned above, the company must first submit an Application for Recommendation to Employ Expatriates to the Manpower Department. The recommendation will be subsequently issued by the Manpower Department and delivered to the Director General of Immigration which will further notify the representative office of the Republic of Indonesia to issue VITAS for the expatriate concerned.

On the basis of VITAS, the company can apply for the issuance of Permit of Limited Stay or ITAS for the expatriate to be employed. The application of ITAS must be submitted to the local immigration office where the expatriate has its domicile.

After completing the procedures mentioned above, the company must subsequently submit application to obtain Foreign Manpower Working Permit of IKTA for the expatriate. The IKTA will be granted for a period mentioned in the RPTKA and may be extended.

Once the IKTA is granted, the company must submit semi-annual reports on the utilization of expatriates and the implementation of RPTKA to the Minister of Manpower.

Visas

A Visa of the Republic of Indonesia may be issued in the form of an official stamp, a sheet of paper inserted into or attached to a passport, an ordinary card, or an electronic card. The type of visa issued shall be based on the visa application. A visa application should be submitted to an Embassy or Consular of the Republic of Indonesia or other official designated by the Government of the Republic of Indonesia.

The following are types of visa recognized under in Indonesia:

Transit Visa

Transit Visa will be issued to foreign national, in possession of valid passport or other legal travel documents who is:

- in transit in the territory of the republic of Indonesia and intents to continue his/her journey to his/her home country or another country;
- a captain or crew members intent to sign on vessel or aircraft which is operating in Indonesia.

Transit Visa on Arrival

A Transit Visa on Arrival can be granted to a foreign national upon arrival in Indonesia, upon major faults beyond the control of such foreign national. The Local Immigration Office after carefully examine the application and upon approval from the Directorate General of Immigration will issue Transit Visa on Arrival.

Visit Visa

A Visit Visa will be granted to a foreign national who visit Indonesia for the following purposes:

- Official Government visit;
- Tour visit;
- Social -Cultural Visit; and
- Business Visit.

A Visit Visa application shall be submitted by the applicant concerned or hi/her sponsor to the overseas Visa Officer after fully comply with the general visa requirement. The applicant purposes of visit may include a show or exhibition activities, trade a professional sport event, attending seminar/conference or giving commercial lecture,

medical treatment, or carrying out a test trial on work instrument or equipment with the approval of a related department.

Visit Visa on Arrival

A Visit Visa on Arrival will be granted to foreign national originally from countries exempted from requirement of possessing a visa, even though his/her arrival in Indonesia is not through an airport or seaport designated for such purposes. A Visit Visa on Arrival can also be granted to a citizen of other countries upon approval from the Director General of Immigration.

A Visit Visa on Arrival can be used for the purposes of an official government visit, an official tour visit, or to join transport devices that operates in Indonesia waters, territorial seas, or an Indonesian exclusive economic zone.

Collective Visit Visa

A Collective Visit Visa will be issued by the overseas Visa Officer by stamping a collective list which has been made and signed by a travel agent who arranges or operates a tour and travel business. The collective list shall consists of names of at least 5 (five) persons with maximum of 25 (twenty-five) persons.

A Collective Visit Visa shall be issued for the purpose of tour visit to tourist objects in Indonesia, or a Social-Cultural visit.

Multiple Journey Business Visa

A Multiple Journey Business Visa will be issued by the overseas Visa Officer to an applicant who intends to visit Indonesia for specific purposes several times. A Multiple Journey Business Visa shall be granted to a holder of passport which is valid for at least 1 (one) year.

A Multiple Journey Business Visa can be granted for the following purposes:

- a. a discussion in the framework of trade transactions;
- b. on-the-spot observation for import-export business;
- c. investigating possibilities for foreign investment in Indonesia;
- d. discussion with Indonesian company(ies) concerning capital or production goods;
- e. attend meeting with his/her company head or branch office(s);
- f. perform quality control of goods that will be imported from Indonesia.

Limited Stay Visa

A Limited Stay Visa shall be granted to foreign national for the following purposes:

- a. foreign investment;
- b. work as an expatriate for government or private sectors;

- c. education, training, or scientific research;
- d. religious duties;
- e. joining a husband and/or a parent who is a foreign national in possession of a Limited Stay Permit/Permanent Stay Permit or who is Indonesia citizen, for the wife and/or legitimate children;
- f. Repatriation for former Indonesian citizen.

The overseas Visa Officer has the authority to issue a Limited Stay Visa to an applicant only upon approval from the Director General of Immigration. A Limited Stay Visa may be granted by the overseas Visa Officer to an applicant who is under 18 (eighteen) years old and still single, provided the applicant:

- a. born overseas after his/her mother had been granted a Limited Stay Visa of Re-entry Permit to Indonesia and which is still valid;
- b. born overseas with parents who are Indonesian citizen.

F. REAL PROPERTY

Relevant Land Rights

The Indonesian land law is governed by the provisions of the Basic Agrarian Law (Law Number 5 of 1960) and numerous implementing regulations. An important element of the replacement of the colonial period land laws by national legislation is the registration of land envisaged under the Basic Agrarian Law. In practical terms, registration of land means that the uniform set of land titles defined in the Basic Agrarian Law is imposed on land.

The Basic Agrarian Law specifies several types of land rights all of which offer the right to utilize the land concerned. Differences exist in duration of validity, nature of utilization, possibility to mortgage and proof in title. The most important of which are the following:

- **Right of Ownership (*Hak Milik*)**

A *Hak Milik* is a right of (freehold) ownership and is the fullest right a person can possess over land in Indonesia. This specific right has no time limit and extends to all fixtures on the land. It is, however, possible to have horizontal separation between the owner of the *Hak Milik* and the owner of a building on the land.

Only Indonesian citizens and certain Indonesian legal entities (*badan hukum*) may hold a *Hak Milik*.

A *Hak Milik* is freely transferable among Indonesian citizens and certain legal persons. The holder of such a right can convey the land to other persons. If the holders are foreigners including PMA companies then they must convert the *Hak Milik* to other rights, such as a Right to Build, Right of Use, or Right of Cultivation as discussed below.

- **Right to Build (*Hak Guna Bangunan* or "*HGB*")**

A *HGB* is a leasehold interest for up to 30 years authorizing the holder to build and possess a building on land. A *HGB* can be extended for an additional 20 years with the possibilities for renewal. The title is granted by and registered at the Land Office. This right is intended for utilization of land as the location for buildings or facilities as opposed to the use of land for agricultural purposes as mentioned below.

A *HGB* may be held only by Indonesian citizens and Indonesian corporations incorporated in Indonesia, which have their legal domiciles in Indonesia, including PMA Companies. Investors constructing industrial projects on industrial land in Indonesia generally seek a *HGB* title over the land.

A *HGB* may be transferred to third parties during the term of its existence. A *HGB* is conveyed by executing a Sale and Purchase Agreement (*Akta Jual Beli*) in the form of a notarial deed, after which it must be registered with the Land Office.

- **Right to Cultivate (*Hak Guna Usaha* or "*HGU*")**

A *HGU* is generally issued on the State owned land specifically granted for estate or plantation activities. It is limited in duration, usually 25 and at most 35 years, with the possibilities for renewal. The *HGU* title is granted and registered with the Land Office.

A *HGU* may be held by Indonesian individuals or legal entities, including PMA companies.

The same rules as for the transferability of *HGB* apply. *HGU* may be transferred to third parties during the term of its existence by executing a Sale and Purchase Agreement (*Akta Jual Beli*) in the form of a notarial deed, after which it must be registered with the Land Office which completes the transfer registration.

- **Right of Use (*Hak Pakai*)**

A *Hak Pakai* is the right to use and/or to collect produces from land administered by the State or owned by another person. *Hak Pakai* is limited in duration by the contract or decree, as the case may be, granting the right, usually for a 25-year period with the possibility for renewal, and is ordinarily subject to specific restrictions on the intended use of the land. The extent of the holder's right and obligations is stipulated (i) for State land, in the decision granting this right by an authorized government official and (ii) for private land, in the agreement with the owner of the land.

Indonesian citizens, Indonesian corporations, foreign residents and foreign corporations can, under the Basic Agrarian Law, hold a *Hak Pakai*.

The transfer of a *Hak Pakai* over State land requires the permission of the relevant authorized officer. The transfer of a *Hak Pakai* over land owned by private citizens is allowed if it is so agreed in the contract granting the right.

Obtaining Land Titles by PMA Companies

For a new prospective PMA company, which requires land or real estate to conduct its business, one crucial procedure must be followed in respect of land. This regards the processing of the Location Permit.

The Location Permit allows a PMA company to acquire the land needed for its operation, and also serves as license for the transfer of rights and for utilizing the land for its investment. The Location Permit must be obtained from the Regent (*Camat*) with jurisdiction where such land is located. Within 12 -36 months (depending the acreage of land) after the issuance of this Location Permit, the PMA company must proceed to

relinquish the land from its original land owners. If the company had previously obtained a Location Permit then it needs to cautiously observe its Permit, as the purchase of the property should be in accordance with it. The investment license issued for the company also contains provisions on the land, if any, required for the intended investment. Therefore, if the properties purchased by the company are more than the acreage stated in its investment license, this will not be allowed unless the company first files an application with BKPM for a revision of its investment license to include a larger land area. A company, having obtained a decree granting its right in the land, will be expected to utilize the land in accordance with the terms of the decree and of its investment approval.

Please note also that there is a strong policy in Indonesia against foreign ownership or control of land. Hence, the PMA companies, while granted the rights in land necessary to make their projects viable, are not allowed to hold land beyond that which is actually required and specifically licensed for their projects.

Ownership of Strata Unit/Condominium by Individual Foreigners

The ownership of strata unit by individual foreigners in Indonesia is governed by a government regulation issued in 1996 (Government Regulation Number 41 of 1996) . Under this Regulation, foreigners resident in Indonesia are only allowed to buy and own residential property if it is built upon land with *Hak Pakai* over State owned land. Ownership of strata unit covers:

- joint right on parts of the condominium (*Bagian Bersama*);
- joint right on things attached to the condominium (*Benda Bersama*); and
- joint right on land which the condominium is built.

All these form a unity of rights which functionally can not be separated. Ownership will be evidenced by a Land Right Certificate (*Sertifikat Hak atas Tanah*) issued by the relevant land office in local regency (*kecamatan*). All ownership rights to a strata unit are initially issued in the name of the developer and only after the respective strata unit is bought, the transfer of right is registered through a Land Conveyancer (*Pejabat Pembuat Akta Tanah* or "PPAT"). The deed and the Land Certificate will be registered in the name of the buyer as the owner of the strata unit. Once it has been properly registered, the owner will be entitled to (i) use or alternatively rent such strata unit to other party (ii) secure such strata unit in the form of land mortgage (*Hak Tanggungan*) and (iii) transfer it to other party.

If one looks carefully, the rights of foreigners to own a residence in Indonesia are in fact quite restricted. The privilege is subject to the foreigners having *Hak Pakai* on State owned land (see above) title and they must sell such real estate if they cease to be residents in Indonesia. The State reserves the right to auction foreigners' property if these conditions are breached. In addition, it is also regulated that foreigners only are allowed to possess a strata unit with the following conditions, among others:

- The foreigners must be domiciled in Indonesia which shall be evidenced by several permits to stay granted by the Government;
- They have never possessed any residence before in Indonesia, therefore, they are required to draft a statement letter in this regard.

G. INTELLECTUAL PROPERTY RIGHTS (“IPRs”)

Indonesia is a party to various conventions relating to IPRs such as the Berne Convention, Paris Convention, Convention Establishing the World Intellectual Property Organization, WIPO Copyrights Treaty, International Convention for the Protection of New Plant Varieties, Patent Cooperation Treaty, and World Trade Organization (“WTO”) Agreement including the Agreement on Trade-related Aspects of Intellectual Property Rights (“TRIPs”). To fulfill the provisions of TRIPs, Indonesia has enacted 7 laws relating to IPRs, namely patents, marks, industrial designs, trade secrets, IC lay-out designs, plant varieties and copyright & related rights.

Patents

Effective as of 1 August 2001, Indonesia enacted a Patents Law (Law Number 14 of 2001), in compliance with TRIPs. Local patent applicants can apply patent applications to the Directorate General of Intellectual Property Rights (“DGIPR”), the Department of Law and Human Rights. Foreigners must apply through a patent consultant in Indonesia. DGIPR recognizes international application entering the national phase (PCT application). To obtain a patent, the invention must satisfy the criteria: novelty, inventive step and industrial applicability.

The Patents Law provides 2 types of patents:

- Standard Patent which protects an invention with claims consist of process/manufacture, machine/apparatus, product, composition of matter (including chemical compound and microorganism). The term of standard patent protection is 20 years from the filing date and non renewable;
- Simple Patent which protects the invention of new apparatus, equipment or product that have practical value because of its shape, configuration, construction or composition. The simple patent has a term of protection for 10 years from the filing date and no extension.

Marks

The law on marks is Law Number 15 of 2001 covering marks for goods and services. This Marks Law adopts a first-to-file principle in which the State grants the right of mark to a person who has registered his or her mark at DGIPR.

A mark cannot be registered for some following reasons:

- The applicant has a bad faith;
- The mark being contrary to public order, morality and the existing law;
- The mark has no differences;
- The mark has been in a public domain;
- The mark is a description to the goods or services;

- The mark has a similarity in principle or in its entirety to the other registered mark for the same goods;
- The mark has a similarity in principle or in its entirety to a well-known mark for the same of goods;
- The mark has a similarity in principle or in its entirety to a well-known geographical indication;
- The mark is the name of a famous person;
- The mark is similar to the name or abbreviation, flag, logo, symbol of the state or national institution or international institution; and
- The mark is similar to the sign or stamp or official stamp used by of the state or government institution.

Registration Procedure

For the registration of a mark, an application is to be submitted in the Indonesian language to DGIPR, enclosing the required documents such as a Power of Attorney, a Declaration of Ownership and 25 labels of the mark concerned. If the applicant resides outside Indonesia, the application must be filed through the Indonesian proxy by way of a power of attorney. Applications which do not meet all of the formal requirements will be returned for completion and/or remedial actions, for which a remedial period of 2 months (or 3 months for applications with a priority right) in principle is granted. Applications which are complete and which meet all of the formal requirements will be examined by DGIPR, for their approval or rejection which should not take longer than 9 months to process. Upon the issuance of the registration approval by DGIPR, the application is published in the Official Marks Gazette (*Berita Resmi Merek*) for 3 months. If the mark application is rejected, the applicant may submit an objection or a response to DGIPR within 30 days as of the date of the rejection letter. A mark is registered for 10 years from the filing date.

Priority Rights

An application with a priority right must be filed within (at the latest) 6 months as of the date of its first filing in a country which is a member of the Paris Convention or a member of the WTO Agreement.

Renewal

A renewal for another 10 years may be applied for within 12 months before the expiry date of the current registration.

Transfer of Rights

Registered marks may be transferred by way of inheritance, testament, grant (*hibah*), agreement, or other reasons accorded by the prevailing law such as the liquidation of a legal entity previously owning the mark. The transfer of a mark must be recorded in the General Register of Marks (*Daftar Umum Merek*) and announced in the Official Mark Gazette. Failure to record the transfer in the General Register on Marks shall cause that such transfer has no legal effects to a third party. Registered service mark rights, which

are inseparable from the ability, quality, or personal skill of the transferor of the service, may also be transferred.

Licensing

A registered mark owner may grant a license to another party on the basis of an agreement for the use of that mark. The term of a license agreement should not be longer than the protection period of the mark concerned, and a license agreement must not contain provisions which are directly or indirectly detrimental to the Indonesian economy or which restricts the Indonesian ability to possess and to develop a technology in principle. Upon its execution, a license agreement must be recorded in the General Register of Marks and announced in the Official Marks Gazette. DGIPR is obligated to reject the recordation of a license agreement containing the above mentioned prohibited provisions.

In the event of the revocation of a mark registration due to the mark's similarity in principle or in entirety with another registered mark, the licensee of the revoked mark who is acting in good faith may continue to perform the license agreement until the expiration of the agreement even though the related mark is cancelled, by royalty to the party whose mark is not revoked. The Law, however, does not define the term "good faith". If the licensee has made a full payment of the royalty to the revoked licensor, such licensor shall be obligated to pay to non-revoked trademark owner, the part of royalty payment for the remaining period of the license agreement. The requirements with respect to a license agreement and the procedure for the registration of a license agreement are yet to be further regulated in a presidential decree.

Deletion

On the initiative of DGIPR or on the basis of the petition of a third party through the Commercial Court, a mark which has not been in use for 3 consecutive years for no apparent reasons or a mark which has been used in respect of goods or services other than the registered goods or services may be deleted from the General Register of Marks.

Geographical Indications

In Indonesia, the provisions on geographical indications are stipulated in the Marks Law. The geographical indication is defined as a sign indicating the area of the origin of goods which, by virtue of geographical factor including natural factor, human factor, or the combination of the two factors, gives certain characteristics and quality to the goods produced. The protection of geographical indication consists of the goods produced by nature, agriculture, handicraft and certain industry. As the lack of implementing regulations, the registration of geographical indication has not been performed yet by DGIPR.

Industrial Designs

One of the considerations for the enactment of Law Number 31 of 2000 on the Designs Law is that Indonesia is rich with differences resulting from its various ethnical groups and cultural diversities. Previously, Indonesia has had Law Number 5 of 1984 on Industry which stipulates the definition of industrial designs. Unfortunately, its implementing regulations on industrial designs registration have not been issued yet. The Designs Law adopts a first-to-file principle in which the State grants the right of industrial design to a person who has registered his or her design at DGIPR.

Trade Secrets

Trade Secrets are protected in Indonesia by Law Number 30 of 2000. Such protection is granted if the technological or business information has confidential character, commercial value, and the information owner keeps the information secretly. No trade secret registration is required by the Trade Secrets Law. However, the trade secret license agreement and trade secret assignment must be recorded at DGIPR and announced in the Official Trade Secret Gazette. If the license agreement and assignment are not recorded they will not be valid to the third parties.

Integrated Circuits Lay-out Designs ("IC Designs")

Indonesia has now a law on Integrated Circuits Designs (Law Number 32 of 2000). According to this IC Designs Law, an integrated circuit lay-out design can be registered for protection by the Law for a period of 10 years calculated as of the first time the IC Design is commercially exploited anywhere, or as of the date the relevant authority receives the application provided that the application has fulfilled all of the administrative requirements. In consideration of the rapid technical development in relation to the IC Designs, the term of protection can not be extended. Applicants who live outside Indonesia must submit the application via a registered consultant of IPRs in Indonesia. It is unclear, however, whether an implementation regulation with respect to this Law is to be issued in the near future, providing guidance as to how to proceed with the registration. As it is, interested parties are not, as yet, able to proceed with the registration of an IC Design.

Plant Varieties Protection ("PVP")

Indonesia enacted Law Number 29 of 2000 concerning PVP which protects breeder's rights, so that the breeder has a motivation to invent the new plant variety needed in agricultural development, especially in the field of agribusiness industry. At present, agricultural sector becomes a very important support for recovering Indonesian economy.

Under the PVP Law, to obtain PVP rights, a breeder or an institution of breeding research and development has to file an application with the PVP Office. The plant variety filed to obtain the protection, consists of a non-transgenetic variety or a

transgenetic variety or essential derivative variety, and has to be examined as to substance. Until now, the PVP Law can not be implemented due to the lack of implementing regulations and the PVP Office is not yet established.

Copyright and Related Rights

The Copyright Law (Law Number 19 of 2002) protects the works in the field of art, literary and science, including related rights. The related rights cover copyright protection for performers, producers of sound recordings and broadcasting institutions

Unlike most rights in the IPRs system, Copyright and Related Rights are granted not upon registration. This means that every work whether it is registered or not will be protected by the Copyright Law. However, it is advisable to register the copyright in order to simplify in providing evidence at the Commercial Court if there is a copyright infringement.

The Copyright Law applies to the following works, namely those of:

- Indonesian citizens, people and legal entities;
- non-Indonesian citizens, non-Indonesian people and non-Indonesian legal entities, which are for the first time published in Indonesia; and
- non-Indonesian citizens, non-Indonesian people and non-Indonesian legal entities provided that the foreign country signs a bilateral agreement with Indonesia for the copyright protection or the foreign country and Indonesia are parties or signatories to the same multilateral agreement for the copyright protection.

Additional Notes

The laws on IPRs, as discussed above, put an emphasis on the relationship between the various rights and the interests of the business community. That is why civil disputes, with the exception of disputes that pertain to trade secrets, are to be resolved through the Commercial Court besides by arbitration or by way of alternative dispute resolution. Punishments inflicted on civil offenders in the form of monetary penalties are preferred by the laws, over physical imprisonments/punishments. Infringements upon any of the IPRs, with the exception of copyright, constitute offences that warrant complaint.

H. ENVIRONMENTAL MANAGEMENT

Environmental management in Indonesia is regulated by Law Number 23 of 1997. The Law defines the management of the living environment as an integrated effort to preserve the function of living environment which includes the policy for the regulation, utilization, development, conservation, restoration, supervision, and control of the living environment.

AMDAL and Licensing

Any undertaking and/or activity causing a significant and important impact towards the environment must have an Analysis concerning the Environmental Impact (*Analisis Mengenai Dampak Lingkungan*, “AMDAL”) to obtain a license to conduct the undertaking and/or activity. Such license is given by the competent official in accordance with the legislative regulations in force. This license must set forth the conditions and obligations to conduct the efforts to control the environmental impact.

In the issuance of a license to conduct an undertaking or activities the following shall be observed:

- the spatial lay-out plan;
- the opinion of the community;
- the considerations and recommendations of the competent official in connection with the undertaking and/or activity.

The decision on the license to conduct such undertaking or activity is published. Without a decision on the license, anyone is prohibited to conduct a waste disposal to environmental media. The competency to issue or refuse a license application is with the Ministry of Environment. Any person is prohibited to conduct an importation of waste of dangerous and toxic material.

Supervision

The Ministry of Environment conducts supervision on the arrangement of responsibility of the undertaking and/or activity.

Environmental Audit

Within the framework of increasing the performance of an undertaking or activity, the Government stimulates the responsible person for the undertaking or activity to conduct an environmental audit. If the responsible person for the undertaking or activity is not carrying out the order for an audit, the Minister is entitled to carry out or has a third party to carry out the environmental audit at the cost of the person responsible for undertaking and/or activity concerned.

Settlement of Environmental Disputes

The settlement of environmental disputes can be conducted through a court of justice or outside the court based on voluntary preference of the disputing parties. The settlement of disputes outside the court is not applicable towards environmental criminal acts as regulated in this Law. If the settlement outside the court has been chosen, the accusation through a court can only be conducted if the said efforts are declared to be unsuccessful by the parties in dispute.

Indemnification

Any action violating the Law constituting pollution and/or destruction causing losses to other people or to the environment, obligates the person responsible for the undertaking and/or activity to pay indemnification and/or to conduct certain actions. Besides the imposition to conduct certain actions, the judge can stipulate the payment of compulsory money for each day of delay in the completion of the said actions.

Strict Liability

The responsible person for the undertaking and/or activity which causes a significant impact towards the environment using dangerous and toxic materials shall be strictly liable for the resulting losses and pay indemnification directly and at once at the moment of the occurrence of the pollution and/or damage to the living environment. Such responsible person can be exempted from the obligation to pay indemnification if the person concerned can prove that the pollution and/or damage to the environment are/is caused by one of the following reasons:

- the occurrence of a natural disaster or a war; or
- the occurrence of a force majeure; or
- the activity of a third party causing the occurrence of a pollution and/or damage to the living environment.

In certain activities pertaining to specific kinds of resources, strict liability rests on those causing the damage and/or pollution of the living environment at the time of the occurrence of the damage and/or pollution

Settlement of an Environmental Disputes Outside Court

The settlement of an environmental dispute outside court is implemented to reach agreement concerning the form and amount of indemnification and/or to determine certain measures to guarantee that no negative environmental impact will occur or recur. The settlement of an environmental dispute can be done with the use of the services of a third party mediator, either one who is granted authority to make decisions or one who is not empowered to make decisions, to assist in the settlement of the environmental dispute.

ANNEX 1

**LIST OF BUSINESS FIELDS
TOTALLY CLOSED TO INVESTMENT**

AND

**LIST OF BUSINESS FIELDS
CLOSED TO INVESTMENT
FOR COMPANIES WITH FOREIGN CAPITAL
AND/OR FOREIGN LEGAL ENTITIES**

LIST OF BUSINESS FIELDS TOTALLY CLOSED TO INVESTMENT

Agricultural Sector

- Cultivation and processing of marijuana and the like.

Marine and Fishery Sector

- Collection/exploitation of sponges.

Industrial and Trading Sector

- Chemical industries that can damage the environment, such as penta chlorophenol, Dichloro Diphenyl Trichloro Ethane (DDT), dieldrin, chlordane, carbon tetra chloride, Chloro Fluoro Carbon (CFC), methyl bromide, methyl chloroform, halon, and others.
- Chemical industries stipulated in Schedule I of the Chemical Weapon Convention (sarin, soman, tabun, mustard, lewisite, ricine and saxitoxin).
- Industries of weapons and weapon components.
- Industries of cyclamates and saccharine.
- Industries of alcoholic beverages (hard liquor, wine and beverages containing malt).
- Casinos/gambling operations.

Communications Sector

- Air Traffic System providers (ATS providers) as well as ship classification and survey statutoria services.
- Management and operation of radio frequency spectra and satellite orbit monitoring stations.

Mining and Energy Sector

- Mining of radioactive minerals.

LIST OF BUSINESS FIELDS CLOSED TO INVESTMENT FOR COMPANIES WITH FOREIGN CAPITAL AND/OR FOREIGN LEGAL ENTITIES

Forestry and Plantation Sector

- Nucleus-plasma cultivation.
- Natural forest concessions.
- Contractors in the field of lumbering.

Communications Sector

- Taxi/bus transport services.
- Small-scale shipping.

Trading Sector

- Trading services and trading supporting services.
Except:

Large-scale retailers (malls, supermarkets, department stores, shopping centers), wholesale trading (distributors/wholesalers, exporters and importers), exhibition/convention providers, quality certification service providers, market research service providers, warehousing service providers other than Line I and seaports, and after-sale services.

Information Sector

- Radio and television broadcasting services, radio and television broadcasting subscription services, and print media.
- Film industry (film making businesses, film technical services, film export businesses, film import businesses, film distribution services, and movie house operation and/or screening services).

ANNEX 2

LIST OF BUSINESS FIELDS OPEN TO INVESTMENT BY WAY OF JOINT VENTURE BETWEEN FOREIGN CAPITAL AND DOMESTIC CAPITAL

LIST OF BUSINESS FIELDS OPEN TO INVESTMENT BY WAY OF JOINT VENTURE BETWEEN FOREIGN CAPITAL AND DOMESTIC CAPITAL

- Building and operation of seaports.
- Electricity production, transmission and distribution.
- Shipping
- Processing and provision of clean water to the public.
- Public railway system.
- Atomic power plants.
- Medical services, including building and operation of hospitals, medical check-ups, clinical laboratories, mental rehabilitation services, public health maintenance security, medical equipment rental, assistance services for health aid and evacuation of patients in emergency condition, hospital management services, and services for testing, maintenance and repair of medical equipment.
- Telecommunications.
- Scheduled/unscheduled commercial air transport.

ANNEX 3

LIST OF BUSINESS FIELDS OPEN TO INVESTMENT UNDER CERTAIN CONDITIONS

LIST OF BUSINESS FIELDS OPEN TO INVESTMENT UNDER CERTAIN CONDITIONS

Marine and Fishery Sector

- Fresh-water fishery.
 - open to foreign investment for fresh-water turtles (*abi-labi*), tilapia nilotica (*nila gift*), anguila sp (*idat*), bullfrogs (*kodok lembu*), fresh-water giant shrimps (*udang galah*), milkfish (*bandeng*) and thillapya sp;
 - in cooperation with people's fisheries.
- Fishing for demersal fish [grouper (*kakap*), snapper (*kerapu*) and other varieties].
 - open except in the Malacca Strait and Arafura sea exclusive economic zones (ZEEI).

Industrial Sector

- Industries of pulp made of wood.
 - raw materials consisting of imported chips or guaranteed supply from industrial forests (HTI);
 - made through process using chemicals other than sulfur and or chlorine bleaching (Cl₂).
- Industries of pulp made of other cellulose fibers or other materials.
 - made through process using chemicals other than sulfur and or chlorine bleaching (Cl₂).
- Chloro-alkali producing industries.
 - other than those using mercury.
- Processing of finished/semi-finished goods of mangrove wood.
 - raw material coming from cultivated mangrove.
- Money printing industry.
 - must secure operational licenses from BOTASUPAL-BAKIN and approval from Bank Indonesia.
- Special printing industries (postage stamps, duty stamps, Bank Indonesia negotiable papers, passports and stamped postal material).
 - must secure operational licenses from BOTASUPAL-BAKIN.
- Milk processing industry (powdered and sweetened condensed milk).
 - processing, not merely repackaging.
- Plywood and rotary veneer industries.
 - only in Irian Jaya (Papua) Province.
- Sawn timber industries.
 - only in Irian Jaya (Papua) Province.
 - outside of Irian Jaya (Papua) Province, only using logs from non-natural forests.
- Ethyl alcohol industries.
 - technical grade used only as raw materials and auxiliary materials of other industries.
- Industries of raw materials for explosives (ammonium nitrates).
 - must be in cooperation with business entities with recommendations from the Department of Defense.

- Industries of explosives and components for industrial needs (commercial).
 - must be in cooperation with business entities with recommendations from the Department of Defense.
 - only manufacturing, storage and distribution are executed by companies appointed by the government.
- Electricity planning and supervision consulting services.

Open to foreign investment on the provision that:

 - Hydroelectric plants (PLTA) with a capacity above 50MW;
 - Steam plants (PLTU) with a capacity above 100MW;
 - Geothermal plants (PLTP) with a capacity above 55MW;
 - Main electrical relay stations with a voltage above 500KV;
 - Transmission networks with a voltage above 500KV.
- Electricity equipment construction, maintenance, installation services, development of technology that supports supplying electricity and testing of electricity installations.

Open to foreign investment on the provision that:

 - Main electrical relay stations with a voltage above 500KV;
 - Transmission networks with a voltage above 500KV.
- Petroleum and natural gas drilling services.

Open to foreign investment on the provision that:

 - only offshore drilling;
 - if locations outside Eastern Indonesia, must be in cooperation with national partners operating in similar fields.
- Power plant businesses.
 - open to locations outside Java, Bali, and Madura.

Trading Sector

- Restaurants
 - open to foreign investment on the special provision that they must be located in tourism areas/zones and/or integrated with hotels.
- Games of skill services
 - open to foreign investment on the special provision that they must be located in tourism areas/zones and/or integrated with hotels.

ANNEX 4

SECTORS/TYPES OF BUSINESS RESERVED FOR SMALL-SCALE ENTERPRISES

SECTORS/TYPES OF BUSINESS RESERVED FOR SMALL-SCALE ENTERPRISES

Agriculture

- Non-broiler chicken breeding

Marine and Fishery

- fishery with ship less than 30 GT/90 OK conducting in waters until 12 nautical mile.
- Cultivation of fishery including the hatchery and fish feeding in fresh water, briny water and sea.
- Fishing of fresh water aquarium fish

Forestry

- Forestry
 - Business of bee-honey breeding;
 - Business of forest plant sugar palm, sago, rattan, candlenut, bamboo and cinnamon;
 - Business of natural swallow nest;
 - Business of community tamarind forest (collecting and processing of tamarind kernels);
 - Business of forest plant for charcoal production;
 - Business of forest plant for sap production;
 - Business of forest plant for essential oil product (pine/turpentine oil, cinnamon oil, tengkawang oil, maleluca oil, cananga oil, fragrant grass oil and etc).

Energy and Mineral Resources

- Community Mining

Trade and Industry

- Industries producing processed beverages and food with preservation process (pickled, salted, sweetened, smoked, drained, boiled, fried and traditional fermentation).
- Yarn-finishing Industries from natural fiber and synthetic fiber into yarn having a tie motif/tied dyed, using manually operated instruments.
- Textile Industries and textile products, including weaving, knitting, batiks and embroidery which has a sign using non mechanical weaving instruments, or device using hand operated instruments including batik, rimless caps and headdresses (worn by Moslems);
- Processing of forest and non food classification garden:
 - Building materials/households: Bamboo, thatch palm, shingled, charcoal, palm fiber
 - Industry materials: sap, tree bark, silk, gambier.
- Hand tool Industries, either manually or semi-mechanically processed.
- Industries producing agricultural hand tools for land preparation, agricultural production process, harvesting, post harvesting, except for mattocks and shovels.
- Industries making clay articles which glazed or unglazed for household purposes

- Industries for maintenance and repair including automotive, ship under 30 GT, electronic, and household utensils, which using manual or semi automatic.
- Industries making handicrafts with traditional local value, artistic value, using natural or imitation raw materials.
- Trade with small scale and informal business.

Communications

- Rural transportation, river transportation, lake transportation and water transportation with 30 GT vessels.

Telecommunications

- Telecommunications services including telephone stalls, internet stalls, and cable installation for house and building.

Health

- Health services/medical services,
 - individual consultation given by health personnel
 - group consultation given by health personnel
 - basic health service facilities
 - health research centers/stations
 - dispensaries
 - midwifery
 - traditional medical consultation services (acupuncture, reflex massage, traditional massage parlor).
 - drug and food trade services:
 - drug shop
 - traditional drug retailer, Javanese medicine sellers carrying their wares in baskets, small shop/ Javanese medicine stall
 - simplisia collectors.

ANNEX 5

SECTORS/TYPES OF BUSINESS OPEN TO MEDIUM-SCALE OR LARGE-SCALE ENTERPRISES IN COOPERATION WITH SMALL- SCALE ENTERPRISES UNDER THE PARTNERSHIP SYSTEM

SECTORS/TYPES OF BUSINESS OPEN TO MEDIUM-SCALE OR LARGE-SCALE ENTERPRISES IN COOPERATION WITH SMALL-SCALE ENTERPRISES UNDER THE PARTNERSHIP SYSTEM

Agriculture

- Tubers agricultural

Marine and Fishery

- Cultivation of sea bass, grouper fish, shrimp, pearl, soft-shell turtle, sidat, bull frogs

Forestry

- The business of natural silk and the business of Industrial Forestry Plantation

Energy and Mineral Resources

- Small Scale Mining

Industry and Trade

- Milk processing industries, prepared foodstuffs of legumes and tubers, sago, gnetum gnemon, copra
- Industries producing stamped batik
- Processing of raw rattan and leather products
- Industries producing clay articles for construction and industries of lime products
- Industries producing silver craft
- Industries producing wooden boats for water tourism and fishing
- Industries manufacturing agricultural machinery of medium scale technology consisting thresher, reapers, hydro tiller, and corn removers
- Industries making hand operated water pumps, bicycle, electrical devices (various kinds of clamps, anker and anker track) and other components, and water housing gauging devices.
- Large Scale Retailers including modern markets consisting of malls, supermarkets, hyper markets, shopping centers, department stores and the like, restaurant service in hotel areas and or areas integrated with the hotels

Tourism

- Tourism Industry:
 - Tourism services business consisting of tourism travel bureau services, convention, incentive travel, tourism consulting services, and tourism information services
 - Tourism Facility Business consisting of jasmine-rated hotels, caravan, tourism transportation, catering services, bar tourism sites, public entertainment such as park, swimming pool, bowling hall, poll house, sauna, rural tourism, folk entertainment services
 - The exploitation of tourism objects, grouped into cultural tourism, tourism objects with special interest and natural tourism.

Transportation

- Business of taxis, loading services, vessels for the transport of goods, community vessels and safekeeping services

Labor

- Educational supporting services such as technical skills, financial, linguistic, tourism, management, information technology, art and agriculture.

ANNEX 6

INVESTMENT APPLICATION FORM UNDER FOREIGN INVESTMENT LAW MODEL I PMA

2 (two) copies submitted to BKPM

Lampiran 2

Formatted: English (U.K.)

SK Kepala BKPM
Number 57/SK/2004

MODEL I / PMA

Formatted: Swedish(Sweden)

INVESTMENT APPLICATION INTERM OF FOREIGN INVESTMENT LAW

This investment application under the Foreign Investment Law Number 1 of 1967 and Number 11 of 1970 is herewith submitted to the Government of the Republic of Indonesia and the implementation of Presidential Decree Number 29 of 2004 concerning Investment Operation for Foreign Investment and Domestic Investment Through a One-Stop Service System :

I. DESCRIPTION OF THE PARTICIPANTS

- A. Foreign Participant(s)
 - 1. Name of company(ies) or individuals :
 - 2. Main line of business :
 - 3. Address (incl. Phone, telex and fax number) :

- B. Indonesian Participant(s)
 - 1. Name (company, cooperative or individuals) :
 - 2. Tax Registration Code Number (NPWP) :
 - 3. - Main line of business :
 - Investment status : PMA, PMDN or Non-PMA/PMDN*
 - 4. Address (incl. Phone, telex, and fax number) :

*) Delete which are not used.

II. DESCRIPTION OF THE PROPOSED PMA COMPANY

- 1. Name of company :
- 2. Main line of business :
- 3. Location of the project :
 - a. Regency :
 - b. Province :
- 4. Annual Production:

Name of Product(s)/Services	Designed Capacity		Remarks
	Value	Amount	
.....
.....
.....
.....

5. Annual Sales of Products:

Name of Product(s)/Services	Value	Export Market Amount	Domestic Market	
			Sales Amount	Internal Use Amount

.....
.....
.....
.....

Estimated total export value : US\$.

6. Land area required :Sq.M/Ha

7. Employment		<u>Expatriate</u>	<u>Indonesian</u>
a. Commissioner(s)		.....	.....
b. Director(s)		.....	.....
c. Professional(s)	: - Manager(s)	.....	.....
	- Expert(s)	.....	.....
d. Worker		X	.....
		-----	-----
Total		.....	.....

Note :

Expatriate professionals position should be specified.

8. Allocation of Investment Funds:

a. Fixed Capital		
- Land & land development		: US\$.
- Building		: US\$.
- Machinery equipment & spare parts		: US\$.
- Others		: US\$.

Sub Total		: US\$.
b. Working Capital (First 3 months production / operation)		: US\$.

Total		: US\$.

Note :

If more than one location/line of businesses, investment funds should be listed for each location and/or line of business.

9. Source of Investment Funds

a. Equity		: US\$.
b. Loan		: US\$.

Total		: US\$

10. Equity Capital

a. Authorized Capital		: US\$.
b. Issued Capital		: US\$.
c. Paid-up Capital		: US\$.

Note

Issued capital should be equal to equity.

11. Shareholding

a. Foreign Shareholding(s)	US\$	%
.....
.....
.....
Sub Total

b. Indonesia Shareholding(s)	US\$	%
.....
.....
.....
Sub Total

c. Total (a + b)	US\$.	100%
	

12. Implementation to be completed within: months from the date of the issuance of the Government's Approvals.

III. DECLARATION

1. We acknowledge that the company(ies) shall be obliged to take preventive measures against any pollution resulting from the operation of our investment project, at our joint venture company's own expense(s) and in conformity with the applicable laws and regulations.
2. This application has been properly and duly executed and we (the participants) are responsible for its accuracy, correctness and completeness, including all data and documents attached hereto.

..... 20

Foreign Applicant(s)

Indonesian Applicant(s)

Stamp duty Rp. 6.000,-

(.....)
Name, Signature

(.....)
Name, Signature, and Stamp

ENCLOSURE

1. By Foreign Participant :
 - a. Articles of Association of the company in English or Indonesian language; or
 - b. Copy of valid passport for foreign individual.
2. By Foreign Investment Company (PMA).
 - a. Articles of Association of the company and any amendment(s)
 - b. Tax Registration Code Number (NPWP).
3. By Indonesian Participant :
 - a. Article of Association of the Company and any amendment(s) or Identity Card for Individual.
 - b. Tax Registration Code Number (NPWP).
4.
 - a. Flowchart of the production process and raw materials requirement for processing industries.
 - b. Explanation of business activities for services sector.
5. Power of Attorney to sign the application if the participant(s) if the participant(s) are represented by another party.
6.
 - a. Other requirements from the sectoral minister concerned, if any, as stated among others in the "Technical Guidance's Book on Investment Implementation."
 - b. Certain sector namely mining sector which has extraction activity, energy sector, palm oil plantation and fishery, must obtain letter of recommendation by the related/technical ministries.
 - c. For the Palm Oil Processing Industry which does not have raw material supplied by its own plantations, the raw material guarantee document supplied by the plantation
7. In the business sector required for partnership cooperation:
 - a. Agreement between Small Scale Enterprise and Medium/Large Scale Enterprise outlining among others name and address of each party, pattern of partnership right and obligation of each party as well as guidance provided for Small Scale Enterprises.
 - b. Letter of Statement from the Small Scale Enterprise concerning that the enterprise fulfills the criteria of Small Scale Enterprises based on Law Number 9 of 1995.

Note: For the requirements at point 6 a, b, c will be coordinated by BKPM with other related government institutions.

ANNEX 7

APPLICATION FORM TO OBTAIN THE BUSINESS PERMIT OF REPRESENTATIVE OF FOREIGN TRADING COMPANY IN INDONESIA

APPLICATION FORM

TO OBTAIN THE BUSINESS PERMIT OF REPRESENTATIVE OF FOREIGN TRADING COMPANY IN INDONESIA

TO BE COMPLETED BY FOREIGN CITIZEN
HEAD OFFICE/BRANCH OFFICE *)

NEW *)
SUCCESSION *)
EXTENSION *)

I. INFORMATION ON THE FOREIGN COMPANY APPOINTING ITS REPRESENTATIVE IN INDONESIA

1. Name of Company : 1.
2. Legal Status : 2.
3. Date of Establishment : 3.
4. Address of Head Office : 4.
5. Line of Business : 5.
6. Letter of Reference from the Embassy of the
Republic of Indonesia in the country where the
Head Office of the company is located,
containing at least points 1 through 5 : 6. (attached)
7. Does the company have a sole agent in Indonesia? : 7. (Yes/No)
8. Does the company invest in Indonesia under the
framework of the 1967 Law on Foreign Investment? : 8. (Yes/No)
 - a. directly under the name of the company : a. (Yes/No)
 - b. jointly with a national company: (name and address): b. (Yes/No)

II. INFORMATION ON THE INDONESIAN CITIZEN APPLYING FOR A BUSINESS PERMIT

1. Name : 1.
2. Citizenship : 2.
3. Address
 - a. Office/Phone : a.
 - b. Residence/Phone : b.
4. Have/Have not obtained a letter of approval/business
permit from the Ministry of Industry and Trade : 4. (Yes/No)
5. If so, state the number and date of the letter of
approval : 5.
6. Present Activity : 6.
7. Personnel : 7. (attached)
 - a. Local (name, post, and city where the personnel

- works) :
- b. Foreign (name, post, citizenship, passport, IKTA, KITAS, Visa, Stay Permit, Foreign Registration Card, and the city where the personnel works) :
8. Have/Have not provided education and training to Indonesian workers : 8. (Yes/No)
9. Working relation with the foreign company abroad : 9.
10. Has the applicant paid surety/administrative fees, if so, attach the evidence thereof. If not, please explain : 10. (Yes/No)
11. Have/have not paid taxes, if so, which taxes, and if not please explain : 11. (Yes/No)
12. Have/have not been in Indonesia, if so, how long has the applicant been in Indonesia, and if not, when will the applicant arrive in Indonesia : 12. (Yes/No)

III. REQUIREMENTS FOR CONSIDERATION OF THE GRANTING OF THE BUSINESS PERMIT OF THE HEAD OFFICE/BRANCH OFFICE *) OF REPRESENTATIVE OF FOREIGN TRADING COMPANY

1. A letter of appointment from the company abroad containing at least: : (attached)
- a. Name of individual appointed as the head of representative office (head office/branch office) : a.
- b. Address of the company abroad : b.
- c. Line of Business : c.
- d. the validity of the letter of appointment : d.
2. Statement that if the applicant obtains a business permit as representative of the head office/branch office *), the applicant shall not conduct trading and shall comply with all provisions on the representative of foreign trading company in Indonesia, issued by the Government of the Republic of Indonesia, in this case the Ministry of Industry and Trade : 2 (attached)
3. Letter of Statement on office space issued by the relevant regional government office of the Minister of Industry and Trade (addresses, owned/rented, existing equipment, etc.) : 3. (attached)
4. Business site permit issued by the Ministry of Home Affairs or authorized agency : 4.
5. Able to pay surety in the amount of Rp. 5.000.000 : 5. (yes/no)
6. Fiscal Statement : 6. (attached)
7. Curriculum Vitae of the Head of the Representative Office : 7. (attached)
8. The applicant undertakes to comply with provisions on: expatriate's working permit issued by the Ministry of : 8. (Yes/No)

Manpower.

9. The applicant undertakes to comply with provisions on : 9. (Yes/No)
stay permit issued by the Ministry of Justice in this case,
the Directorate General of Immigration

IV. DOMICILE OF THE REPRESENTATIVE OF HEAD OFFICE/BRANCH OFFICE *)

State the domicile/address of the representative of the head office/branch office
) for which a business permit is applied (only one location in Indonesia).
Hereby certify that all statements/attachments referred to above are true.

_____, 20__
APPLICANT
Rp. 6.000 duty stamp
(_____)
Full Name

1. *) delete as required
2. a. Should any information not mentioned in columns in the application form, it should be written in a separate paper as an integral part of other attachments.
b. The size/format of all attachments should be the same as this application form.
c. All attachments and information as meant in letters a and b above, must have the signature of the applicant and stamped.
3. the completed application form should be put in a clipped folder, and the name/address and telephone number of the applicant should be written in the outer part of the folder.

ABNR is available to advise and assist foreign investors with every legal aspect of the establishment of their business activities and operations in Indonesia and to ensure that they comply with current regulatory requirements.

This ABNR Memorandum is prepared for the general information of our clients and other interested persons. This Memorandum is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, this Memorandum is not to, and must not, be regarded as legal advice.

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