

Newsletter

INDONESIA

INCORPORATION OF COMPANY IN INDONESIA

The Incorporation of a limited liability company is governed by the Company Law No. 40 of 2007 (the "Company Law").

Under the Company Law shareholders of an Indonesian company have limited liability in respect of the liabilities of the company once the Deed of Establishment (which contains the Articles of Association) of the company has been approved by the Minister of Justice and Human Rights ("MOJ").

Upon signing the Deed of Establishment before a notary public, a company is considered to be established and can trade in its own name. However, in the period between signing the Deed of Establishment and the receipt of MOJ approval for the Articles Of Association, the company is considered to be a kind of unlimited liability company whose founders (shareholders) have unlimited personal liability for the actions and liabilities of the company.

This personal liability is extinguished once the MOJ approval is obtained and a general meeting of shareholders is held to approve, ratify and adopt all prior actions and liabilities undertaken in the company's name. Directors also have personal liability during this "company in formation" period. Their personal liability remains longer, namely until the new company is registered in the Company Register maintained by the Department of Industry and Trade and published in the State Gazette.

Accordingly, once MOJ approval has been obtained for the company's articles of association, shareholders in an Indonesian company are only liable for the company's obligations to the extent of their subscribed share capital, namely up to the nominal value of the shares held by them. The reference to "PT" in all Indonesian company names is an abbreviation for Perseroan Terbatas which means "limited (liability) company" and therefore equates to "Ltd".

However, even after MOJ approval of the company's articles of association has been obtained, the Company Law provides that the benefit of limited shareholder liability may be lost in certain circumstances.

Subject to certain restrictions, foreign persons may be shareholders in an Indonesian company with the prior approval of the Capital Investment Coordinating Board ("BKPM").

FOREIGN COMPANY

A foreign direct investment company in Indonesia (known locally as "Penanaman Modal Asing" or PMA), can take the form of a 100% foreign owned limited liability company or can be established as a limited liability company through a joint venture with Indonesian partners.

Foreign Company, most often referred to by its Indonesian abbreviation - PMA, is governed primarily by the Foreign Capital Investment Law No. 1 of 1967, amended by Law No. 11 of 1970 and the Company Law No. 40 of 2007.

The Corporate Law requires that there are at least two shareholders in a PMA company, or any limited liability company. The shareholders can be two individuals, two companies, or a mixture of both. Therefore, in the case of a PMA company with full foreign ownership, the foreign investor initially planning the investment in Indonesia must invite another foreign party to participate in shareholding of the proposed company.

INCORPORATION OF PMA COMPANY

The Investment Coordinating Board (BKPM), the government body which processes and handles FDI companies, issued an important deregulation package on PMA in May 1994 referred to as PP-20/1994. It was seen as a very significant step toward a much more conducive and attractive investment environment in Indonesia. The regulation:

1. Allows 100% FDI investment in selected areas of business
2. Limits foreign direct investment to 95%, with a minimum of 5% ownership by an Indonesian
3. Allows FDI investment with certain conditions
4. Stipulates the sectors which are closed to FDI investment

One can obtain a copy of the FDI application in English from Indonesian embassies overseas or from the Investment Coordinating Board office either from the head office in Jakarta or from regional offices in the provinces.

For those companies choosing to make a 100% foreign investment, there is a requirement that 15 years from the commencement of commercial operations, the 100% foreign shareholder must sell at least 5% of the firm to an Indonesian entity. A company which is initially 95% foreign owned is not subject to any divestment requirement.

The amount of capital to be invested in a foreign-owned company is decided by the investing parties themselves, and the BKPM approval is based on the economics and scale of the project. Foreign investment companies are basically free to choose where in Indonesia they will set up operations, with the proviso that factories must be in areas zoned for industry or in an industrial estate.

The life of foreign investment companies has been extended by allowing the renewal of the fixed operating license (IUT) for an additional 30 years. In other words, the initial licenses are valid for 3 years (SPPP BKPM), plus 2 x 30 years, for a total of 63 years.

The process of incorporation of a new foreign direct investment company:

Step 1. Prepare and send the application with required documentation, compiled according to the investment plan. Set up a joint venture agreement if you are making the investment with Indonesian partners.

Step 2. Obtain the Initial License (SPPP BKPM), valid for 3 years.

Step 3. Incorporation of SPPP BKPM.

Establish Articles of Association with a Public Notary detailing proof of capital investment, and send it to the Ministry of Justice for approval and issuance of State Gazette

5. Registration of company address with local council (domicile)
6. IRD registration (NPWP + PKP)
7. Registration with the Department of Industry and Trade (TDP)

- Step 4. Key expatriate positions (work permits) and Fixed Operating License (30 years)
- Step 5. Prepare and send the 6-month report (LKPM) to the provincial BKPM office as well as UUG (HO) nuisance act to the regional office of BKPM
- Step 6. Incorporate facilities - Master list/APIT or property ownership
- Step 7. Provincial approval for Fixed Licenses (BAP)
- Step 8. Fixed License (IUT) for 30 years is issued.

A Limited Liability company is established either under foreign shareholders or through a joint venture with Indonesians or wholly owned by Indonesian shareholders and must be approved by the Ministry of Justice. It doesn't matter who is the owner of an Indonesian Limited Liability company, they must comply with Indonesian law and are considered an Indonesian company and the company can subsequently be changed or sold to the shareholders, foreign or Indonesian.

To get license of Change of Capital and Change of Owner the applications should be submitted to BKPM. According to BKPM, there's no charge to arrange licenses.