

PT PMA: Business Fields

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What is PT PMA

The definition of ‘Foreign Investment’ activities as in accordance with Article 1(3) of Law Number 25 of 2007 on Investment (“Law 25/2007”), *“an investing activity to do business within the territory of the Republic of Indonesia which is undertaken by foreign investors, either by fully using foreign capital or in the form of joint venture with domestic investors.”*¹ According to existing laws, a foreign business has the right to procure a business license in Indonesia as in accordance with Article 9 of Regulation of The Investment Coordinating Board of The Republic of Indonesia Number 4 of 2021 on Guidelines and Procedures For Risk-Based Business Licensing Services and Investment Facilities (“BKPM Regulation 4/2021”).

Foreign business entities as mentioned above means foreign business entities that are established outside the territory of Indonesia and carries out business and/or activities in certain sectors.² These entities consist of: franchisors from abroad; foreign futures traders; foreign private electronic system organizer; and permanent establishment.³ Additional to these provisions, a Limited Liability Company of Foreign Investment or also known as (“PT PMA”), as the name suggests needs to be established in the form of ‘Limited Liability Company’ (“LLC”) and in the form of Large-scale Business.⁴ This is regulated in Law 25/2007, Presidential Regulation Number 10 of 2021 on Investment Business Fields (“Presidential Regulation 10/2021”), and Government Regulation In Lieu of Law Number 2 of 2022 on Job Creation (“Perpu 2/2022” or ‘Omnibus Law’).

General information and descriptions regarding PT PMA can be seen [here](#).

What Business Sectors are off-limit for PT PMA?

In general, all business sectors are open to investment activities, except for business sectors that are declared to be closed to investment or activities that can only be carried out by the

¹ Law Number 25 of 2007 on Investment, Article 1 (3)

² BKPM Regulation, Article 9 (4)

³ *Ibid.* Article 9 (11)

⁴ Presidential Regulation 10/2021, Article 7 (1) *jo.* BKPM Regulation, Article 12 (2)

Central Government. Referencing to Article 2 of Presidential Regulation Number 49 of 2021 on Amendment to Regulation of the President Number 10 of 2021 on Investment Business Fields (“Presidential Regulation 49/2021”) as amended by Article 77 (2) of the Omnibus Law.⁵ These ‘declared to be closed to investment’ business fields, include:

- a. Cultivation and industry of category I narcotics;
- b. All forms of gambling and/or casino activities;
- c. Capture of fish species listed under Appendix I of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- d. Utilization or taking of corals (koral) and utilization or taking of reefs (karang) from nature which are used for building materials/lime/calcium, aquarium, and souvenirs/accessories, as well as live coral or recent death coral from nature;
- e. Chemical weapon manufacturing industry; and
- f. Chemical industry and ozone-depleting substance industry.

As well as, Alcoholic Beverages Industry (KBLI 11010), Alcoholic Beverages Industry: Wine (KBLI 11020), and Malt Beverages Industry (KBLI 1103).⁶

What Business Sectors are available for PT PMA?

According to Article 77 (2) of ‘Omnibus Law’, there are three categories of business sectors that are either open to investment activities, declared to be closed to investment or is a sector that can only be carried out by the Central Government. Thus, foreign investors can only invest in business sectors that are open to investment activities, which are determined by its commercial in nature characteristics.⁷ These are:⁸

- a. Priority Business Fields;
- b. Business Fields allocated to or requiring partnerships with Cooperatives and Micro, Small, and Medium Enterprises (“MSME”);
- c. Business Fields with certain requirements; and
- d. Business fields that are not included in letter a, letter b, and letter c (this means this type of business field may be entered by all investors).

⁵ Presidential Regulation 49/2021, Article 2; Omnibus Law, Article 77 (2)

⁶ *Ibid*, Article 2 (2b)

⁷ Presidential Regulation 49/2021, Article 2 (1a)

⁸ Presidential Regulation 10/2021, Article 3

Priority Business Fields

Business Fields that are categorized as ‘Priority’ must fulfil these criterias:⁹

- a. Nationally strategic program/project;
- b. Capital-intensive;
- c. Labor-intensive;
- d. Advanced technology;
- e. Pioneering industry;
- f. Export-oriented/; and/or
- g. Oriented toward research, development, and innovation activities.

There are 245 Business Fields that **meet the criterias, these include: Indonesian Standard Industrial Classification, scope of products, and requirements** which are listed under Appendix I of this Regulation of the President.¹⁰ Priority Business Fields listed under the Appendix are granted **Fiscal Incentives and/or Non-fiscal Incentives**.¹¹ Further description regarding these incentives can be seen below:

Fiscal Incentives, include:¹²

Tax incentives, which consist of:

1. Income tax facilities for investment in certain business fields and/or in certain areas (*tax allowance*);
2. Reduction of corporate income tax (*tax holiday*); or
3. Reduction of corporate income tax and net income reduction facilities for the purpose of investment and reduction of gross income for the purpose of certain activities (*investment allowance*), including:
 - a. Reduction of net income for new investment or business expansion in certain business fields that are labor-intensive industries; and/or
 - b. Reduction of gross income for organizing work practice, apprenticeship and/or learning activities in the framework of human resources guidance and development based on certain competency; and

⁹ Presidential Regulation 10/2021, Article 4

¹⁰ Appendix I of Presidential Regulation 49/2021

¹¹ Presidential Regulation 10/2021, Article 4 (4)

¹² *Ibid.* Article 4 (5)

Customs and excise incentives in the form of import duty exemption for the import of machinery as well as goods and materials for industrial construction or development in the framework of Investment.

Non-fiscal Incentives, include:¹³

Non-fiscal incentives provided encompass:

- Ease of business licensing;
- Provision of supporting infrastructure;
- Guaranteed availability of energy;
- Guaranteed availability of raw materials
- Immigration, manpower; and
- Other conveniences in accordance with the provisions of laws and regulations.

Business Fields Allocated To or Requiring Partnerships With Cooperatives and MSME

These Business Fields are categorized into two sub-categories, which include:

a. Business fields which are allocated to Cooperatives and MSME:¹⁴

Business Fields that are allocated to Cooperatives and MSME are determined based on:

- Business activities that do not utilize technology;
- Business activities which has specific process, labor-intensive in nature, as well as has special and Hereditary cultural heritages; and
- The business capital of the activities does not exceed IDR 10,000,000,000.00, excluding the value of land and buildings

Note: In events that Business Fields allocated to Cooperatives and MSME with the criterias mentioned above have reached the level of ‘Large-scale Business’, they may continue the business activities in accordance with existing regulations and be required to implement partnership schemes with other Cooperatives and MSME within the business fields that are allocated.

¹³ *Ibid.* Article 4 (6)

¹⁴ *Ibid.* Article 5 (2)

b. Business fields that are open to large-scale businesses in partnership with Cooperatives and MSME

Business Fields that are open to large-scale businesses in partnership with Cooperatives and MSME are determined based on:

- Business Fields which are commonly operated by Cooperatives and MSME; and/or
- Business Fields that are encouraged to enter the Big Business supply chain

The list of Business Fields allocated to or requiring partnerships with Cooperatives and MSME that have met the criterias, include: Indonesian Standard Industrial Classification, allocated to Cooperatives and MSME, partnerships, and the sectors are listed under Appendix II of this Regulation of the President.¹⁵

Business Fields With Certain Requirements

Business Fields that are open with certain requirements are business fields that can be operated by all Investors, including Cooperatives and MSME that meets these following requirements:¹⁶

- a. Investment requirements for domestic Investor;
- b. Investment requirements with limitations placed on foreign Investment;
- c. Investment requirements involving special licensing; or
- d. Other Investment requirements, namely business sectors that are restricted and strictly supervised as well as regulated in separate laws and regulations in the field of alcoholic beverage control and supervision.

Note: The list of business fields that are open with certain requirements that has met the criterias, include: Indonesian Standard Industrial Classification and requirements are listed under Appendix III of this Regulation of the President.¹⁷

Business Fields that fall into the the provision of ‘Other Investment’ requirements, include:¹⁸

- a. Wholesale Trade of Liquor/Alcoholic Beverages (importers, distributors, and sub-distributors) (KBLI 46333);
- b. Retail Trade of Liquor or Alcoholic Beverages (KBLI 47221); and

¹⁵ Appendix II of Presidential Regulation 49/2021

¹⁶ Presidential Regulation 49/2021, Article 6

¹⁷ Apendix III of Presidential Regulation 49/2021

¹⁸ Presidential Regulation 49/2021, Article 6 (3a)

- c. Street Retail Trade of Liquor or Alcoholic Beverages (KBLI 47826).

Additionally, provision for ‘Investment requirements involving special licensing’ means investment requirements with limitations placed on foreign Investment. It does not, however, apply towards:¹⁹

- a. Investments that have been approved in certain business fields prior to the promulgation of this Regulation, as listed in the business licensing, unless the provisions under this Regulation are more profitable for Investment; or
- b. Investors who obtain special rights based on an agreement between Indonesia and the country of origin of said investor, except if the same provisions on business fields regulated under this Regulation are more profitable for the Investor.

Situations Exempting Application of Existing Requirements

Special Economic Zones

Provisions regarding requirements for ‘Business Fields With Certain Requirements’ are exempted in cases where investment activities that are carried out in special economic zones. In this case, Foreign Investment in special economic zones in technology-based startup Business Field can make investments with an investment value equal to or less than IDR 10,000,000,000.00.²⁰

Investment Activities That Are Carried Out Indirectly/Portfolio

Provisions regarding requirements for ‘Business Sectors Allocated To or Requiring Partnership With Cooperatives and MSME’ and ‘Business Fields With Certain Requirements’ are exempted in cases where Investment activities that are carried out indirectly/portfolio of which the transaction is carried out through domestic capital market.²¹

Conclusion

Before investing into PT PMA, it is imperative that a foreign investor conducts a thorough research on available business fields that are open for investment activities in Indonesia as well as the provisions it entails. However, with the fluctuative and unstable regulatory climate

¹⁹ *Ibid.* Article 6 (4)

²⁰ *Ibid.* Article 8

²¹ *Ibid.* Article 9

of Indonesia's legislative process, gaining a comprehensive understanding might prove to be difficult. Here at Selaras Law Firm (SLF), we provide legal assistance and consultation for foreign investors who are thinking/planning to establish their PT PMA. See more of our work in our 'Company Profile' below.

Company Profile

Source

Laws and Regulations

- Law Number 25 of 2007
- Government Regulation In Lieu of Law Number 2 of 2022 on Job Creation ('Omnibus Law')
- Presidential Regulation Number 49 of 2021 on Amendment to Regulation of the President Number 10 of 2021 on Investment Business Field
- Presidential Regulation Number 10 of 2021 on Investment Business Fields
- Regulation of The Investment Coordinating Board of The Republic of Indonesia Number 4 of 2021
- Appendix I of Presidential Regulation 49/2021
- Appendix II of Presidential Regulation 49/2021
- Appendix III of Presidential Regulation 49/2021