

CHAPTER IV

FINDING AND ANALYSIS

A. The Investment Principles according to the ASEAN Comprehensive Investment Agreement (ACIA)

The overall objective of the ASEAN Comprehensive Investment Agreement (ACIA) is to establish a regime of free investment, open, transparent and integrated for domestic and international investors across the ASEAN region, and benefits ASEAN Comprehensive Investment Agreement (ACIA) including the liberalization of investment, non-discrimination, transparency, investor protection and investor state dispute resolution.

1. Investment Liberalization

ASEAN Comprehensive Investment Agreement (ACIA) in the face of the liberalization of cross-border investments in five sectors: manufacturing, agriculture, fisheries, forestry, mining and quarrying, and services related to each sector. Each ASEAN member countries submitted a list of reservations for these sectors, and anything not on the list is subject to national policy, liberalization and opens to ASEAN investors. Each member state is then responsible for reducing or eliminating their

reservation list in accordance with the three phases of the ASEAN Economic Community Blueprint Strategic Schedule. The ASEAN countries are also committed to enhance cooperation in areas including:

- a. Investment policy convergence;
- b. The procedure for application and approval of investment;
- c. Exchange information related investments, rules, regulations, policies and procedures;
- d. Improved coordination among government ministries and agencies; and
- e. High level of consultation with stakeholders to facilitate private sector investment.

To help promote the ASEAN region as an integrated investment area that has favorable conditions for domestic and international investment, all member countries agreed through the ASEAN Comprehensive Investment Agreement (ACIA):

- a. Create an environment that is needed to promote all forms of investment and new growth areas in ASEAN;
- b. Promoting intra-ASEAN investment, especially investment from ASEAN-6 (Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand) to ASEAN countries that are less developed;

- c. Maintain the growth and development of Small and Medium Enterprises; and
 - d. Promoting a joint investment initiative focusing on regional groups and production networks.
2. non-discrimination

Non-discrimination refers equality in treatment for ASEAN investors and their investment in other important functions of the ASEAN Comprehensive Investment Agreement (ACIA). National treatment and most-Favoured Nation Treatment principles of this Agreement obliges member countries of ASEAN not to discriminate and treat ASEAN investors are less profitable than competitors both local and foreign. Under the National Treatment, ASEAN countries agreed to treat investors from ASEAN countries no less favorably than it treats investors in the reception, the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory. Under the Most Favoured Nation Treatment, all ASEAN investors should be treated equally and this includes investors from non-ASEAN countries. In addition, member states cannot impose requirements specific nationality at the senior management unless no booking officially published, and if the member requires the board of directors in a foreign company to be a certain nation or become citizens, it cannot interfere with

the ability of investors to control investment. ASEAN Comprehensive Investment Agreement (ACIA) ensures no performance requirements and cannot impose conditions like minimum contents of local, export requirements, or trade balancing requirements.

3. Transparency

Another guiding principle of the ASEAN Comprehensive Investment Agreement (ACIA) is to increase the transparency and predictability of investment rules, regulations and procedures conducive to increased investment. These include:

- a. Harmonizing investment policies that lead to a convergence of investment policy;
- b. Making efficient and simplified procedures for investment applications and approvals; and
- c. Conducting dissemination of information about the rules, regulations, policies and procedures affect investors and their investment in ASEAN.

Showing that the ASEAN Comprehensive Investment Agreement (ACIA) is rule-based and predictable investment rules promotes transparency reflected in the various terms and some of the requirements including:

- a. Notifying other ASEAN member countries while imposing restrictions on the transfer of funds;
 - b. Informing the Board of ASEAN Comprehensive Investment Agreement (ACIA) when introducing new legislation or any change in existing laws, regulations or administrative guidelines which significantly affects investment or commitment of ASEAN member countries; and
 - c. Making publicly available all relevant laws, regulations and administrative guidelines of general application relating to or affecting investment.
4. Protection of Investors

ASEAN Comprehensive Investment Agreement (ACIA) also provides enhanced protection for investors and their investments, including fair and equitable treatment, full protection and security, no unlawful expropriation, compensation in case of disputes, and free transfer of funds. ASEAN member countries have agreed to provide that all investments are included in the fair and equitable treatment of ASEAN Comprehensive Investment Agreement (ACIA), not deny justice in judicial or administrative process in accordance with the principles of due process, and that the host country will not make arbitrary decisions and

follow its rules and regulations. For any legal action, ASEAN investors have the right to legal representation and the right to appeal.

ASEAN member countries will also take steps reasonably necessary for the protection and security of the investment at any time, including in any riot or insurrection. Agreement on investment losses as a result of armed conflict, civil conflict, or emergency, non-discriminatory compensation or restitution is required by the ASEAN Comprehensive Investment Agreement (ACIA). This agreement also protects investors against unauthorized takeover, and if the member does not take over the investment, adequate compensation is required. Insurance rights to recover well protected and member states should provide input, while living and working permits for investors, executives, managers and board members of ASEAN investors. However, this authority is subject to all immigration and labor laws and relevant policies.

In agreement with ASEAN Comprehensive Investment Agreement (ACIA), each State Party shall permit all transfers relating to a closed investment to be made freely and without delay into and out of its territory in a currency that can be used freely in the market exchange rate prevailing at the time of transfer. Transfer may include capital contributions included an initial contribution.

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B. Procedures for establishing a Limited Liability Company for Foreign Investment Company (*PT PMA*) in Indonesia

To establish the limited liability company, the main requirement is that all shareholders are Indonesian citizens. In the event of any foreign element either in a part or as a whole, the limited liability company must be in the form of limited liability company on Foreign Investment. A limited liability company in its development of new investors entering the foreign status (either individual or an entity), the liability company must change their status to liability company foreign investment.

Before deciding to establish, first finding out whether the business of a limited liability company is foreign investment or not. The business of foreign investment became the first benchmark of whether or not such area

should be done by a limited liability company on foreign investment. It is because there are some fields of certain businesses that are still closed to be done by a limited liability company on foreign investment, and must be done by a limited liability company whose shareholders wholly citizen/legal entity Indonesia. If indeed such areas open to be done by a limited liability company on foreign investment, of course, we need to know also whether such area requires maximum ownership percentage of the number of foreign shareholders. It can be seen from the Negative List of Investment.

We have learned the Negative List of Investment and know with certainty about whether or not such area carried out by a limited liability company on foreign investment. In general, the requirements to apply for principles that permit the establishment of a limited liability company on foreign investment in the Investment Coordinating Board are as follows:

1. The Permission Submission principle to start a new business in the context of the establishment of limited liability company on foreign investment through Investment Coordinating Board:
 - a. Name of company;
 - b. Regency/City as a business domicile;
 - c. The amount of capital required to carry out such business;
 - d. Major shareholders and percentage of capital of each shareholder; and
 - e. The Board of Directors and Commissioners.

2. Filing the petition must fill an online application form at this link:
<https://online-spipise.bkpm.go.id/>
3. Preparing documents as follows:
 - a. For the Founder/Foreign Shareholders (foreign individuals or foreign legal entity):
 - 1) The Company's Articles in Indonesian or English all its amendments, approval or reporting/notification; and
 - 2) Copy of valid passport of individual shareholders
 - b. For the founder of which is a citizen or legal entity Indonesia:
 - 1) For the limited liability company must complete:
 - (a) The Company's articles following all its amendments, approval or reporting/notification; and
 - (b) Licensing standard company: Taxpayer Registration Number/Trade Business License/Company Registration Certificate.
 - 2) For the individual citizen: personal ID card and Taxpayer Registration Number.
 - c. The supporting documents required to complete the requirements are as follows:
 - 1) Flowchart production process and raw materials required for the industrial process; and
 - 2) Description/explanation for the process of business continuity.

- d. The original power of attorney (in the case represented by the founder/others);
- e. For special business fields that require additional permission from the particular agency, the application must also be accompanied by documents such as:
 - 1) Completeness of other data required by the relevant Ministry (if any) and expressed in "Technical guidance's book on investment implementation"; and
 - 2) For certain sectors, for example the mining sector perform extraction activities, the energy sector, oil palm plantations and fisheries, requires a letter of recommendation from the relevant technical ministry.
- f. In the business sector is needed in terms of cooperation or partnership with local authorities, the required supporting data are in the form of:
 - 1) Cooperation agreement (could be a Joint Venture, the Joint Operation, MOU, etc.) between small entrepreneurs and businessmen medium/large states-side parties, the system of cooperation, rights and obligations; and
 - 2) Statement of smaller companies that qualify as Small Company under Regulation No. 9 of 1995.

Note: For requirements e points 1) and 2) must be coordinated in advance between Investment Coordinating Board institution/Ministry concerned.

After the file is completed, a new license can be processed at the Investment Coordinating Board. According to the rules, since the document declared complete, the approval of the Head of Investment Coordinating Board can be obtained on period of 12 working days. However, to obtain assurance that the application file is declared complete, need to undergo a process of correction repeatedly. Thus, it is better if before the files included, do any consultation with the existing Investment Coordinating Board officials.

Permission Investment Coordinating Board principle must be followed up with the implementation of practical actions which must be supported by charging Investment Activity Report that must be filled online and reported regularly every 3 months. After a limited liability company on Foreign Investment significantly conducts its activities continuously, which is evidenced by charging its Investment Activity Report, then 12 months after the license granted, Liability Company on Investment Coordinating Board may submit Permanent Business Permit. It's where applicable, as well as the trade business license (original) on a regular limited liability company.

4. Establishment a limited liability company on Foreign Investment

- a. After Permit from Investment Coordinating Board out, then it can start to process the incorporation of a limited liability company on Foreign Investment (note, the name of liability company can be used/approved by the Minister).
 - b. A copy of the deed to be completed within a maximum period of two weeks of work since the signing of the deed.
5. Handling Domicile and Taxpayer Registration Number on behalf of Limited Liability Company concerned Taxpayer Registration Number created for limited liability company on Foreign Investment should be a special Taxpayer Registration Number of Limited Liability Company on Investment Coordinating Board time to approximately 10 working days.

Note: At this time, it might as well take care of Letters Taxable Entrepreneur. The time is up to 12 working days because there is a survey of the local Tax Office business location.
6. Opening an account in the name of the Company and depositing the share capital in the form of cash to the treasury of the Company. The proof of payment is submitted to the Notary for completeness validation request to the Justice Department Republic of Indonesia.
7. Submission of approval/ratification of the articles of association to the Ministry of Justice and Human Rights.

Law No. 40 of 2007 mentions 14 working days since obtaining No objection from Ministers. However, with already more sophisticated online system, the time can be just 1 day only. The approval of the Minister also includes the registration in the Company Register as mandated by the Act.

8. Once out attestation of the Ministry of Justice, Company Registration could be administered within a period of approximately 14 working days.
9. Once this is done, the maintenance of the State Gazette of his stay can be conducted, and the time is 3 months.

After all the procedures passed, it must be followed by business type. When it is an industry, it must take care of Location Permit, Law disorder, Industrial Business Licence.

In the event that the company will enter the factory machines, because the status of liability company Foreign Investment, then no subsidy or tax relief duty on such machines. But for that, they must take care Permit LimitedLiability Company again at Investment Coordinating Board, namely: Masterlist and Import Meanwhile Identification Number.

After that, at the time the machine will go, there should be the relevant paper work on a duty-free entry of Limited Liability Company on Investment Coordinating Board and continued withpermission of the customs form

Registration Letter Producers or Letter Importer Registration. In the port later limited liability company on Foreign Investment must also take care of getting notification and imported goods.

So in general, after the articles of association of Limited Liability Company on Investment Coordinating Board approval of the Minister, the Limited Liability Company on Investment Coordinating Board can begin administering licensing related to the business of Limited Liability Company on Foreign Investment referred to in the Investment Coordinating Board, among others:

1. Facility import duties for machinery
2. Facility import tax
3. Recommendations for the exemption of Income Tax
4. Import Identification Number – Producers
5. Import Identification Number – General
6. Manpower Utilization Plan
7. Recommendations visa to work visa
8. Permits Employing Foreign worker

Those are the procedures of the establishment of Limited Liability Company on Investment Coordinating Board to start their business.