

## Indonesia

### Law Concerning Investment (2007)

*Unofficial translation*

#### **Note**

The Investment Laws Navigator is based upon sources believed to be accurate and reliable and is intended to be up-to-date at the time it was generated. It is made available with the understanding that UNCTAD is not engaged in rendering legal or other professional services. To confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate. While every effort is made to ensure the accuracy and completeness of its content, UNCTAD assumes no responsibility for eventual errors or omissions in the data.

The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

# Contents

**Chapter I. General provisions**

**Chapter II. Principles and objectives**

**Chapter III. Basic policy of investment**

**Chapter IV. Form of corporation and domicile**

**Chapter V. Treatment to investment**

**Chapter VI. Manpower**

**Chapter VII. Business field**

**Chapter VIII. Investment development to micro, small and medium-sized enterprises, and cooperatives**

**Chapter IX. The rights, obligation, and liability of investor**

**Chapter X. Investment facility**

**Chapter XI. Company legalisation and licensing**

**Chapter XII. Coordination and implementation of investment policy**

**Chapter XIII. Organisation of investment**

**Chapter XIV. Special economic zone**

**Chapter XV. Dispute settlement**

**Chapter XVI. Sanctions**

**Chapter XVII. Transitional provisions**

**Chapter XVIII. Concluding provisions**

**I. General**

**II. Article by article**

# Law Concerning Investment

Official Gazette No. 67, 2007 and Supplement to Official Gazette No. 4724

Law of the Republic of Indonesia Number: 25 of 2007 Concerning Investment

IN THE NAME OF THE ALMIGHTY GOD

PRESIDENT OF INDONESIA,

## Considering:

- a. that, to realise an impartial, prosperous community based on Pancasila (National Ideology) and the 1945 Constitution of the Republic of Indonesia, it is necessary to develop sustainable national economy based on economic democracy in order to achieve the objective of having a state;
- b. that, pursuant to mandate written in the Decision of the People Consultative Assembly of the Republic of Indonesia Number: XVI/MPR/1998 concerning Political Economic in the framework of Economic Democracy, investment policy should properly be based on people economy by involving the development of micro, small and medium-sized enterprises, and cooperatives;
- c. that, to accelerate national economic development, as well as to realise Indonesian political and economic sovereignty, it is necessary to increase investment for making the economic potential into the real economic strength by using capitals originating from both domestic and overseas;
- d. that, in confronting global economic changes and Indonesia's participation in a variety of international cooperation, it is necessary to create investment climate whose nature is conducive, promotive, legally certain, impartial, and efficient, by continuously considering the interest of national economy.
- e. that, the Law Number: 1 of 1967 concerning Foreign Investment, as amended with the Law Number: 11 of 1970 concerning Amendment and Supplement to the Law Number: 1 of 1967 concerning Foreign Investment, as well as the Law Number: 6 of 1968 concerning Domestic Investment, as amended with the Law Number: 12 of 1970 concerning Amendment and Supplement to the Law Number: 6 of 1968 concerning Domestic Investment, should be replaced because they no longer suit the necessity to accelerate the national economic and legal development, especially in investment sector.
- f. that, based on considerations set forth at point a, b, c, d, and e above, it is necessary to make a Law concerning Investment.

## In view of:

Paragraph (1) of Article 4, Paragraph (1) of Article 5, Paragraphs (1), (2), and (5) of Article 18, Article 20, as well as Article 33 of the 1945 Constitution of the Republic of Indonesia.

With joint approval of House of Representative of the Republic of Indonesia and President of the Republic of Indonesia hereby decree:

To stipulate: THE LAW CONCERNING INVESTMENT

# Chapter I. General provisions

## Article 1

In this Law, the meaning of:

1. Investment shall be any kinds of investing activity by both domestic and foreign investors for running business within the territory of the Republic of Indonesia.
2. Domestic Investment shall be any investing activity for running business within the territory of the Republic of Indonesia, made by any domestic investor using domestic capital.
3. Foreign Investment shall be any investing activity for running business within the territory of the Republic of Indonesia, made by any foreign investor using either foreign capital entirely or joint capital with domestic capital.
4. Investor shall be any individual or corporation that makes investment in form of either domestic or foreign investors.
5. Domestic Investor shall be any individual of Indonesian citizen, Indonesian corporation, the state of the Republic of Indonesia, or any region making investment within the territory of the Republic of Indonesia.
6. Foreign Investor shall be any individual foreign citizen, foreign corporation, or foreign state making investment within the territory of the Republic of Indonesia.
7. Capital shall be any asset in form of money or any forms other than money possessing economic value owned by any investor.
8. Foreign Capital shall be any capital owned by any foreign country, individual foreign citizen, foreign corporation, foreign legal entity, and/or Indonesian legal entity, whose capital is owned partially or entirely by foreign party.
9. Domestic Capital shall be any owned by the state of the Republic of Indonesia, individual Indonesian citizen, or corporation or non-corporation.
10. One-Stop Integrated Service shall be any licensing or non-licensing activity delegated or authorised by any institutions or agencies possessing licensing or non-licensing authority, whose issuance process shall begin with application stage up to the document issuance stage conducted in a single place.
11. Regional Autonomy shall be any rights, authorities, and obligations of any autonomous regions to govern or deal with the governmental interest and local community interest in accordance with the rules of law.
12. Central Government, herein after called Government, shall be any the President of the Republic of Indonesia holding the governmental power of the state of the Republic of Indonesia pursuant to the 1945 Constitution of the Republic of Indonesia.
13. Regional Government shall be any governor, regent or mayor, and regional instrument as the organising element of regional government.

**Article 2**

Provisions in this law shall apply to any investments in any sectors within the territory of the Republic of Indonesia.

## **Chapter II. Principles and objectives**

**Article 3**

1) Investment shall be organised based on the principle of:

- a. legal certainty;
- b. openness;
- c. accountability;
- d. the equal treatment without discriminating the country of origin;
- e. togetherness;
- f. impartial efficiency;
- g. sustainability;
- h. environmental friendly;
- i. independency;
- j. balance of progress and national economic unity.

2) The objective of investment organisation shall be for, among others:

- a. increasing national economic growth;
- b. creating job opportunity;
- c. improving sustainable economic development;
- d. improving competitiveness of national business sphere;
- e. increasing the capacity and the capability of national technology;
- f. encouraging people economic development;
- g. processing economic potential into the real economic strength by using fund coming from both domestic and foreign countries;
- h. improving the prosperity of the community.

## **Chapter III. Basic policy of investment**

**Article 4**

1) Government stipulates the basic policy of investment for:

- a. encouraging the creation of conducive national business climate for investment in order to strengthen the competitiveness of national economy; and

b. accelerating the increase of investment.

2) In making the basic policy set forth in paragraph (1) above, the Government is:

a. to provide the same treatment to any domestic and foreign investors, by continuously considering the national interest;

b. to warrant legal certainty, business certainty, and business security to any investors since the licensing process up to the end of investment activity pursuant to the rules of law; and

c. to give opportunity for development and to give protection to micro, small, and medium-sized enterprises, and cooperatives.

3) Basic policy that is set forth in paragraph (1) and (2) above shall be realised in form of General Plan of Investment.

## Chapter IV. Form of corporation and domicile

### Article 5

1) Domestic investment may be in form of corporation, non-corporation, or individual business, in accordance with the rules of law.

2) Unless otherwise stipulated by the law, any foreign investment shall be in form of limited liability company based on the law of the Republic of Indonesia.

3) Both domestic and foreign investors making an investment in form of limited liability company shall be carried out by:

a. having shares when such company is established;

b. purchasing the shares; and

c. executing any other way pursuant to the rules of law.

## Chapter V. Treatment to investment

### Article 6

1) The Government shall provide the same treatment to any investors originating from any countries making investment in Indonesia pursuant to the rules of law.

2) Treatment set forth in paragraph (1) shall not apply to investor of certain countries that have received privilege by virtue of an agreement with Indonesia.

### Article 7

1) The government shall neither nationalise nor take over the ownership right of any investors, except through the law.

2) In the event that Government either nationalises or takes over the ownership right of any investors set forth in paragraph (1) above, the Government is required to pay compensation whose amount is stipulated based on market price.

3) If any of the parties fails to reach agreement on the compensation or indemnity, set forth in paragraph (2) above, it shall be settled through arbitration.

#### **Article 8**

1) Any investors may transfer their assets to another party they choose in accordance with the rules of law.

2) Any assets other than those set forth in paragraph (1) above shall constitute assets owned by the state as stipulated by the law.

3) Any investors shall have the right to make transfer or repatriation in foreign currency to, among others:

a. capital;

b. profit, bank interest, dividend, and any other revenue;

c. funds required for:

1. purchasing raw materials and support materials, intermediate products, or final product;

2. reimbursement of capital goods in order to secure the investment;

d. additional fund required for financing investment;

e. fund for loan repayment;

f. payable royalty or interest;

g. income of any foreign individuals working in any investment company;

h. the proceeds of any sale or liquidation of investment;

i. compensation for any loss;

j. compensation for any takeover;

k. payment made for technical aid, payable costs for technical service and management, payment made under project contract, and payment for intellectual property right; and

l. proceeds of asset sale set forth in paragraph (1) above;

4) The right to make transfer and repatriation set forth in paragraph (3) above shall be conducted in accordance with the rules of law.

5) Provisions set forth in paragraph (1) above shall not prejudice to:

a. Government authority to apply the rules of law requiring the reporting of any fund transfer;

b. Government's right to collect tax and/or royalty and/or any other government's revenues from investment pursuant to the rules of law;

c. the implementation of the law that protects creditor's rights;

d. the implementation of the law that prevents the state from any loss.

#### **Article 9**

- 1) In the event that any investors have yet to settle any legal liability:
  - a. either investigator or the Minister of Finance may ask any bank or any other institution to postpone such right to make such transfer and/or repatriation; and
  - b. any authorised court shall apply such postponement of the right to make any transfer and/or repatriation based on lawsuit.
- 2) Either Bank or any other institution shall apply such postponement by virtue of court judgment set forth at point b of paragraph (1) until after the investors have settled all of their liabilities.

## Chapter VI. Manpower

### Article 10

- 1) Any investment companies shall prioritise in recruiting workers those of Indonesian citizen.
- 2) Any investment companies shall be entitled to use experts of foreign citizen on certain position and expertise in accordance with the rules of law.
- 3) Any investment companies are required to improve the competence of workers of Indonesian citizen through work trainings pursuant to the rules of law.
- 4) Any investment companies employing foreign experts are required to provide trainings and transfer of technology to workers of Indonesian citizen pursuant to the rules of law.

### Article 11

- 1) Efforts shall be devoted to settle any industrial relation dispute with deliberation between any investment company and the workers.
- 2) If such efforts set forth in paragraph (1) above fail to materialise, the settlement shall be made through three-party mechanism.
- 3) If settlement set forth in paragraph (2) above fails to materialise, such investment companies and their workers shall settle their industrial relation dispute through an industrial relation court.

## Chapter VII. Business field

### Article 12

- 1) Any business fields or types are open to investment activity, except for those declared as being closed and open with certain conditions.
- 2) Business fields closed to foreign investment are:
  - a. production of weapons, ammunition, explosive equipment, and warfare equipment; and
  - b. any business sectors explicitly declared closed based on the law.
- 3) Government by virtue of Presidential Regulation is to specify business fields closed to both foreign and domestic investments based on the criteria of health, moral, culture, environment, national defence & security, and other national interests.



4) Both criteria and requirements for business fields declared as being closed and being open with certain conditions will be arranged in Presidential Regulation.

5) Government is to specify business fields open with certain conditions based on the criteria of national interest, namely, the protection of natural resources, protection of micro, small and medium-sized enterprises, as well as cooperatives, supervision of production and distribution, increase of technological capacity, participation of domestic capital, and joint venture with companies appointed by the government.

## **Chapter VIII. Investment development to micro, small and medium-sized enterprises, and cooperatives**

### **Article 13**

1) Government is required to specify business fields reserved for micro, small and medium-sized enterprises, and cooperatives, as well as business fields opened to large enterprise with conditions it has to work together with micro, small and medium-sized enterprises, and cooperatives.

2) Government is to cultivate and develop micro, small and medium-sized enterprises, and cooperatives through partnership programme, competitiveness improvement program, innovation encouragement, and market development, as well as information distribution to the farthest extent.

## **Chapter IX. The rights, obligation, and liability of investor**

### **Article 14**

Every investor shall be entitled to obtain:

- a. right certainty, legal certainty and protection certainty;
- b. open information about business fields it is running;
- c. service; and
- d. various forms of facility according to the rules of law.

### **Article 15**

Every investor is required to:

- a. apply the principle of good company management;
- b. implement the company's social liability;
- c. make report on investment activity and submit it to the Investment Coordinating Board.
- d. respect cultural tradition of communities around the location of investment business activity;

e. comply with all of the rules of law.

#### **Article 16**

Every investor shall be liable to:

- a. secure capital originating from any sources not in violation with the rules of law;
- b. bear and settle any obligations and losses if such investor halt or leave or abandon its business activity unilaterally in accordance with the rules of law;
- c. create healthy competitive business climate, refrain from monopoly practice, and any other matters that inflict damage to the state;
- d. preserve the environment;
- e. provide safety, health, convenience, and prosperity to workers; and
- f. comply with all of the rules of law.

#### **Article 17**

Any investors exploiting non-renewable natural resources are required to allocate fund in stages for the recovery of location that fulfils the standard of environmental worthiness, whose implementation shall be in accordance with the rules of law.

## **Chapter X. Investment facility**

#### **Article 18**

- 1) Government is to provide facilities to any investors.
- 2) Investment facilities set forth in paragraph (1) above may be given to any investors that:
  - a. expand its business;
  - b. make new investment.
- 3) Investors receiving facilities set forth in paragraph (2) above shall be those fulfil at least one of the following criteria:
  - a. to employ plenty of workers;
  - b. belonging to high priority scale;
  - c. belonging to infrastructure development;
  - d. transferring technology;
  - e. pioneering new industry;
  - f. domiciling in remote area, deserted area, border area, or any other area deemed necessary;
  - g. preserving the environment;
  - h. conducting research, development, and making innovation;
  - i. making partnership with micro, small and medium- sized enterprises, or cooperatives;

- j. using capital goods or machinery or equipment produced domestically.
- 4) Facilities given to investors set forth in paragraph (2) and (3) may be in form of:
    - a. net income tax deduction up to certain level of investment made within certain period.
    - b. import duty holiday or reduction for imported capital goods, machinery, or equipment domestically unavailable for production;
    - c. import duty holiday or reduction for raw materials or support materials for production within certain period and with certain conditions;
    - d. value added tax holiday or postponement for imported capital goods or machinery or equipment domestically unavailable for production within certain period;
    - e. accelerated depreciation or amortisation; and
    - f. Property Tax reduction, especially for certain business fields in certain region, area, or zone.
  - 5) Company's income tax holiday or reduction within certain amount and period may be given to new investment in any pioneering industries, that is, any industries possessing extensive connections, providing high value added and externalities, introducing new technology, and possessing strategic value for national economy.
  - 6) Facilities in form of import duty reduction or holiday will be given to any existing investors that will replace their machinery or other capital goods.
  - 7) Further provisions on fiscal facility set forth in paragraph (4) up to (6) shall be stipulated through regulations of the Minister of Finance.

#### **Article 19**

Facilities set forth in paragraph (4) and (5) of Article 18 will be given based on national industrial policy issued by the Government.

#### **Article 20**

Facilities set forth in Article 18 do not apply to any foreign investments not in form of Limited Liability Company.

#### **Article 21**

In addition to facilities set forth in Article 18, Government will provide service and/or licensing convenience to investment companies in obtaining:

- a. land rights;
- b. immigration service facility; and
- c. import licensing facility.

#### **Article 22**

1) Ease of service and/or land right permit set forth in Article 21 point a may be given, extended and renewed in advance simultaneously and may be further renewed upon request of investors in form of:

- a. Hak Guna Usaha (Leasehold) may be given for 95 (ninety-five) years and simultaneously renewed in advance for 60 (sixty) years, and it may be further renewed for 35 (thirty-five) years.
  - b. Hak Guna Bangunan (Building Rights) may be given for 80 (eighty) years and simultaneously renewed in advance for 50 (fifty) years, and it may be further renewed for 30 (thirty) years.
  - c. Hak Pakai (Right of Use) may be given for 70 (seventy) years and simultaneously renewed in advance for 45 (forty-five) years, and it may be further renewed for 25 (twenty-five) years.
- 2) Land Rights set forth at point a of Article 21 may be granted and simultaneously renewed in advance for any investment activity, with, among others, the following conditions :
- a. such investment is for long term and associated with the structural change of Indonesian economy into the more competitive one;
  - b. such investment is with the level of investment risk requiring long-term Return on Investment according to the types of the investment activity;
  - c. such investment does not require extensive area;
  - d. such investment uses state-owned land rights; and
  - e. such investment does not interrupt the sense of impartiality in the community as well as public interest.
- 3) Land Rights may be renewed after being evaluated that the land can be further used according to the condition, nature, and objective of granting such rights.
- 4) The granting and the simultaneous renewal of land rights in advance and further renewal set forth in paragraph (1) and (2) above may be halted or annulled by the Government if the investment company abandons the land, inflicts damage to public interest, uses or make use of the land in violation with the purpose and objective of such granting of land rights, or violates any rules of law applicable to land matters.

### **Article 23**

- 1) Service and/or licensing convenience for immigration facility set forth at point b of Article 21 may be granted for:
- a. any investment requiring foreign workers for realising the investment;
  - b. any investment requiring foreign workers whose nature is temporary for repairing machinery, other production supports, and post-sale service;
  - c. any prospective investors making inquiry in investment.
- 2) Service and/or licensing convenience for immigration facility set forth at point a and b of paragraph (1) above shall be granted after such investor has been recommended by the Investment Coordinating Board.
- 3) Facilities granted for foreign investment are:
- a. limited residential permit for two (2) years for foreign investors.

- b. change of status from limited residential permit into permanent residential permit for foreign investors after living in Indonesia for two (2) consecutive years;
  - c. one-year re-entry permit will be granted for several trips to any holders of limited residential permit that will apply for twelve (12) months starting from the day such limited residential permit is granted;
  - d. two-year re-entry permit will be granted for several trips to any holders of limited residential permit that will apply for twenty- four (24) months starting from the date such limited residential permit is granted; and
  - e. re-entry permit will be granted for several trips to any holders of permanent residential permit that will apply for twenty-four (24) months starting from the date such permanent residential permit is granted.
- 4) The granting of limited residential permit to foreign workers set forth at point a and b of paragraph (30) above will be done by the Directorate General of Immigration based on recommendation of the Investment Coordinating Board.

#### **Article 24**

Service and/or licensing convenience for import licensing facility set forth at point c of Article 21 may be granted for importing:

- a. any goods so long as it does not violate the law governing merchandise trade;
- b. any goods that have no negative impact on the safety, security, health, environment, and moral of the nation;
- c. any goods for plant relocation from abroad to Indonesia; and
- d. any capital goods or materials for production demand of its own.

## **Chapter XI. Company legalisation and licensing**

#### **Article 25**

- 1) Any investors making investment in Indonesia shall comply with the provisions of Article 5 of this law.
- 2) Legalisation of domestic investment company in form of corporation or non-corporation shall be done in accordance with the rules of law.
- 3) Legalisation of domestic investment company in form of Limited Liability Company shall be done in accordance with the rules of law.
- 4) Unless otherwise stipulated in the law, any investment companies shall obtain permit before making any business activity in accordance with the regulations issued by relevant authorised agency.
- 5) Permit set forth in paragraph (4) above shall be obtained from the One-Stop Integrated Service.

**Article 26**

- 1) One-Stop Integrated Service is meant to assist investors in obtaining service convenience, fiscal facility, and information about investment.
- 2) One-Stop Integrated Service shall be provided by authorised institution or agency in investment sector that have been delegated or assigned by institution of agency possessing the authority to make licensing or non-licensing at central level, or by institution of agency possessing the authority to issue licensing or non-licensing in a province or regency/city.
- 3) Provisions on the method and implementation of such One-Stop Integrated Service set forth in paragraph (2) above shall be governed with Presidential Regulation.

## **Chapter XII. Coordination and implementation of investment policy**

**Article 27**

- 1) Government is to coordinate investment policy among government agencies, between government agency and the Central Bank (Bank Indonesia), between Government and Regional Government, and among the regional governments.
- 2) Coordination for the implementation of investment set forth in paragraph (1) above shall be done by the investment Coordinating Board.
- 3) The Investment Coordinating Board set forth in paragraph (2) above shall be led by a Chair that will directly report to the President.
- 4) The Chairman of the Investment Coordinating Board set forth in paragraph (3) above shall be appointed and dismissed by the President.

**Article 28**

- 1) In coordinating the implementation of investment, the investment Coordinating Board shall have duties and functions as follows:
  - a. To carry out the duty and the coordination for the implementation of any policy in the investment sector.
  - b. To study and recommend policy in investment service;
  - c. To specify the norms, standard, and procedure for the implementation of investment activity and service;
  - d. To develop investment opportunity and potential in the regions by empowering companies;
  - e. To make Indonesian investment map;
  - f. To promote Investment;
  - g. To develop investment business field through the development of investment by, among others, increasing partnership, increasing competitiveness, creating healthy business competition, and by giving as much information within the scope of investment activity;

h. To help solving problems of various obstacles and giving consultation on any problems faced by investors in making their investment.

i. To coordinate domestic investors in making investment outside Indonesian territory; and

j. To coordinate and implement the One-Stop Integrated Service.

2) In addition to the coordination duty set forth in paragraph (2) of Article 27, the Investment Coordinating Board shall be assigned to provide investment service based on the rules of law.

#### **Article 29**

In implementing its duty, function, and One-Stop Integrated Service, the Investment Coordinating Board is required to involve directly the representatives of every sector and relevant region, as well as officials possessing the competency and authority.

## **Chapter XIII. Organisation of investment**

#### **Article 30**

1) Government and/or regional government shall provide business certainty and security in the implementation of investment.

2) Regional governments are to organise investment affairs under their authority, except for those organised by the Government.

3) Regional governments are to organise investment affairs under their authority based on the criteria of externality, accountability, and efficiency.

4) The Government is to organise cross-province investment.

5) Regional government is to organise cross-regency investment.

6) Regencies/cities are to organise investment in their respective regions.

7) Investments organised by the Government shall be:

a. Those associated with non-renewable natural resources possessing high environmental damage risk.

b. Those highly prioritised industrial sectors at national level.

c. Those associated with unifying and connecting function between regions or those of cross- province scope.

d. Those associated with the implementation of national defence and security.

e. Any foreign investments and investors using

foreign capital, originating from government of another country, based on agreement entered into between the Government and such government of another country.

f. Any other investments under the authority of the Government pursuant to the law.

8) In organising investment under the authority of the Government, set forth in paragraph (7) above, the Government may organise it by itself, delegate it to governor as its representative, or assign it to reGENCY/city government.

9) Provisions on the division of investment organisation shall be further stipulated in Government Regulation.

## **Chapter XIV. Special economic zone**

### **Article 31**

1) Special economic zones may be specified and developed for accelerating economic development in certain regions whose nature is strategic for national economic development, as well as maintaining balance of regional progress.

2) Government shall have the authority to stipulate separate investment policy in such special economic zones.

3) Provisions on special economic zones set forth in paragraph (1) above shall be governed with the law.

## **Chapter XV. Dispute settlement**

### **Article 32**

1) In the event of dispute in investment sector between Government and any investors, the two parties shall devote their entire effort to settle it with deliberation.

2) In the event that such settlement set forth in paragraph (1) above fails, such dispute shall be settled through arbitration or alternative settlement or court of justice in accordance with the rules of law.

3) In the event of dispute in investment sector between Government and any domestic investors, the two parties may settle it through arbitration based on agreement between them, and if such settlement through

arbitration fails, such dispute shall be settled by court of justice.

4) In the event of dispute in investment sector between Government and any foreign investors, the two parties may settle it through international arbitration based on agreement between them.

## **Chapter XVI. Sanctions**

### **Article 33**

1) Both domestic and foreign investors in form of Limited Liability Company are prohibited from entering into any agreement and/or making statement confirming share ownership in the limited liability company and on behalf of another party.

2) In the event that both domestic and foreign investors enter into agreement and/or make statement set forth in paragraph (1) above, such agreement and/or statement shall be null and void for the sake of the law.



3) In the event that any investors running business based on agreement and/or work contract with the Government commit a corporate crime in form of tax crime, marking up the recovery cost or any other costs in order to reduce profit that will inflict damage to the state. Based on findings or audit by any authorised official and has received court judgment that have permanent legal power, the Government shall terminate such agreement and/or work contract.

#### **Article 34**

1) Any companies or individuals set forth in Article 5 that fail to fulfil their obligation pursuant to Article 15, they may receive administrative sanction in form of:

- a. Written warning;
- b. Business restriction;
- c. Suspension of business and/or investment facility; or
- d. Revocation of business license and/or investment facility.

2) Authorized agency or institution pursuant to the rules of law shall issue administrative sanction set forth in paragraph (1) above.

3) In addition to administrative sanction, such companies or individuals may receive other sanctions pursuant to the rules of law.

## **Chapter XVII. Transitional provisions**

#### **Article 35**

Any international agreement, whether bilateral, regional, or multilateral, in investment sector having been approved by Indonesian Government prior to the issuance of this law shall remain effective until the termination of such agreement.

#### **Article 36**

Draft of any international agreement, whether bilateral, regional, or multilateral, in investment sector not having been approved by Indonesian Government at the time of the issuance of this law shall be adjusted to this law.

#### **Article 37**

1) When this law is effective, any provisions of law in form of implementation rules of the Law Number: 1 of 1967 concerning Foreign Investment, as amended with the Law Number: 11 of 1970 concerning Amendment and Supplement to the Law Number: 1 of 1967 concerning Foreign Investment, as well as the Law Number: 6 of 1968 concerning Domestic Investment, as amended with the Law Number: 12 of 1970 concerning Amendment and Supplement to the Law Number: 6 of 1968 concerning Domestic Investment shall remain effective so long as they do not contradict those of this law and so long as the new implementation rules for this law have yet to be made.

2) Any investment approval and implementation permit granted by the Government based on the Law Number: 1 of 1967 concerning Foreign Investment, as amended with the Law Number: 11 of 1970 concerning Amendment and Supplement to the Law Number: 1 of 1967 concerning Foreign Investment, as well as the Law Number: 6 of 1968 concerning Domestic Investment, as amended with the Law Number: 12 of 1970 concerning Amendment and Supplement to the Law Number: 6 of 1968 concerning Domestic Investment shall remain effective until their termination.

3) Any investment request and other requests regarding investment submitted to the authorised agency prior to the issuance of this Law, but up to the date this law is issued have not been approved by the Government, shall be adjusted to the provisions of this Law.

4) Any investment companies received business permit from the Government based on the Law Number: 1 of 1967 concerning Foreign Investment, as amended with the Law Number: 11 of 1970 concerning Amendment and Supplement to the Law Number: 1 of 1967 concerning Foreign Investment, as well as the Law Number: 6 of 1968 concerning Domestic Investment, as amended with the Law Number: 12 of 1970 concerning Amendment and Supplement to the Law Number: 6 of 1968 concerning Domestic Investment may renew such business permit based on this law when it expires.

## Chapter XVIII. Concluding provisions

### Article 38

When this law is effective:

a. Law Number: 1 of 1967 concerning Foreign Investment (State Gazette of the Republic of Indonesia Number: 1 of 1967, Supplementary State gazette of the Republic of Indonesia Number: 2818), as amended with the Law Number: 11 of 1970 concerning Amendment and Supplement to the Law Number: 1 of 1967 concerning Foreign Investment (State Gazette of the Republic of Indonesia Number: 46 of 1970, Supplementary State Gazette of the Republic of Indonesia Number: 2943); and

b. Law Number: 6 of 1968 concerning Domestic Investment (State Gazette of the Republic of Indonesia Number: 33 of 1968, Supplementary State gazette of the Republic of Indonesia Number: 2853), as amended with the Law Number: 12 of 1970 concerning Amendment and Supplement to the Law Number: 6 of 1968 concerning Domestic Investment (State Gazette of the Republic of Indonesia Number: 47 of 1970, Supplementary State Gazette of the Republic of Indonesia Number: 2944), are null and void.

### Article 39

Any rules of law directly connected to investment shall be made based on and adjusted to this Law.

### Article 40

This law shall apply as of its enactment.

# Elucidation on the law of the republic of Indonesia number: 25 of 2007 concerning investment

## I. General

One of the objectives of the establishment of state government is to improve public prosperity. Such mandate has been described, among others, in Article 33 of the 1945 Constitution of the Republic of Indonesia and it constitutes the constitutional mandate outlining the making of the entire rules of law in economic sector. The constitution requires that national economic development be based on the principle of democracy capable of creating the realisation of Indonesian economic sovereignty. The connection of economic development with players of people economy is further specified with the Determination of the People Consultative Assembly of the Republic of Indonesia Number: XVII/MPR/1998 concerning Political Economy in the Framework of Economic Democracy as the materialistic legal source. Hence, investment development for micro, small and medium-sized enterprises, and cooperatives become part of investment basic policy.

With respect to it, investment must become part of national economic organisation and be placed as an effort to increase sustainable national economic growth, to increase the capacity and the national technological capability, to encourage people economic development, and to realise community prosperity in a competitive economic system.

The objective of organizing investment can only be achieved if the supportive factors hampering the investment climate can be overcome through, among others, improvement of interagency coordination between Central and Regional Government, the creation of efficient bureaucracy, legal certainty in investment sector, highly competitive economic cost, and conducive business climate in the field of manpower and business security. By improving such supportive factors, it is expected that investment realization will be improved significantly.

Spiritual condition in making the Investment Law is based on the spirit of creating conducive investment climate so that the Investment Law will govern matters deemed significant, such as, among others, those associated with the law coverage, investment basic policy, the form of companies, treatment to investment, business sector, and interrelationship between economic development and people economic players realised in the arrangement of investment development for micro, small and medium-sized enterprises, and cooperatives; the rights, obligations, and responsibilities of investors, as well as investment facilities, legalisation and the licensing, coordination and implementation of investment policy containing the arrangement of institution, organisation of investment affairs, and provisions governing dispute settlement.

This Law includes all direct investment activities in all sectors. This Law also provides equal treatment in the investment framework. In addition, this Law requires that the Government improve coordination among government agencies, between Government agencies and the central bank (Bank Indonesia), and between central and regional governments. Coordination with regional governments must be in line with the regional autonomy spirit. Regional governments, together with agencies and institutions either private or governmental, must be empowered even more in developing both regional potential opportunity and in promotional coordination, as well as investment service. Regional governments are to carry out the autonomy to the maximum extent in order to arrange and deal with investment organisation of their own, based on regional autonomy principle and supporting duty or decentralisation. Therefore, the improvement of such institutional coordination must be measured from the speed of licensing and investment facilities at the competitive cost. To fulfil the principle of such economic democracy, this law must also require the making of the rules of law regarding business fields closed to investment and those open with certain conditions, including those requiring partnership or those reserved for micro, small and medium-sized enterprises, and cooperatives.

The principal problem investors confront in starting business in Indonesia are considered in this Law so that there will be the arrangement on legalisation and licensing, in which there is the arrangement for One-Stop Integrated Service. In this system, it is expected that integrated service in central and regional may simplify the licensing and accelerate its completion. In addition to investment service in the regions, the Investment Coordinating Board has the duty to coordinate the implementation of investment policy. The Investment Coordinating Board is led by a Chair that will directly report to the President. Job description and the function of the Investment Coordinating Board basically strengthens its role in overcoming investment barrier, increases certainty in giving facility to investors, and strengthens the role of investors. Such increased role of investment must remain in the corridor of national development policy made in the stage of microeconomic stability and interregional economic balance, sector, business player, and community groups, to support the role of national business, as well as to fulfil the norms of good corporate governance.

Investment facilities are given by considering the economic competitiveness level and the state's financial condition, and they must be more promotive in nature compared to those given by other countries. The importance of certainty in giving investment facilities requires more detailed arrangement in form of fiscal facility, land rights facility, immigration, and import-licensing facility. However, such investment facilities are also given in order to encourage manpower recruitment, interconnection between economic development and people economic player, export orientation and more-advantageous incentive to any investors using capital goods or machinery or equipment domestically produced, as well as facilities associated to investment location in deserted regions and regions with limited infrastructure, that will be further arranged in details in the rules of law.

By considering these matters, this Law also gives rooms to the Government in making policy for anticipating various international agreements and simultaneously encouraging other international cooperation in order to increase regional and international market opportunity to Indonesian products and services. Economic development policy in certain regions is meant to attract international market potential and the growth of special economic zone or region whose nature is strategic for national economic development. Besides, this Law also governs the right to transfer and repatriate assets by considering legal liability, fiscal and social obligation the investors must fulfil. Possible disputes between investors and the Government are anticipated as well by arranging the dispute settlement method.

The rights, obligations, and responsibilities of investors are specially arranged in order to provide legal certainty, to confirm the obligations of investors in applying the principle of good corporate governance, to honour traditional culture of the community, and to implement corporate social responsibility. The arrangement of investors' responsibility is necessary in order to encourage healthy business competition, to improve environmental liability and to fulfil the rights and obligations of workers, as well as the effort to encourage investors' compliance to the rules of law.

Global economy is characterised by the increasing international competition so that investment policy must be encouraged in order to create national economic competitiveness for encouraging Indonesian economic integration towards the global economy. Global economy is also marked by the presence of trade block, common market, and free trade agreements based on synergy between parties or countries entering into agreements. It will also happen with Indonesia's involvement in a variety of international cooperation with respect to investment, whether bilaterally, regionally or multilaterally (World Trade Organisation/WTO), so that it will have with consequences to be confronted and complied.

Because of the considerations above and the investment law that have prevailed for about 40 (years), it is urgent to make Investment Law as the replacement of the Law Number: 1 of 1967 concerning Foreign Investment, as amended with the Law Number: 11 of 1970 concerning Amendment and Supplement to the Law Number: 1 of 1967 concerning Foreign Investment, as well as the Law Number: 6 of 1968 concerning Domestic Investment, as amended with the Law Number: 12 of 1970 concerning Amendment and Supplement to the Law Number: 6 of 1968 concerning Domestic Investment that up to now become the legal foundation of investment in Indonesia, because these laws are no longer appropriate for the today's challenges and necessities in accelerating national economic development through the construction of national law in investment sector, whose nature is competitive and siding with national interest.

## II. Article by article

### Article 1

Self-explanatory

### Article 2

"Investment in all sectors in the Republic of Indonesia" shall mean direct investment by excluding indirect or portfolio investment.

### Article 3

Paragraph (1), Point a: "Legal certainty principle" shall mean the principle in any law-obedient country that lays the law and rules of law as the foundation in every policy and legal action in the field of investment

Point b: "Openness principle" shall mean the principle opened to community rights to obtain correct, honest, indiscriminative information concerning investment activity

Point c: "Accountability principle" shall mean the principle determining that every activity and final result of making investment shall be accountable to the community or the people, as the holder of the highest sovereignty of the country in accordance with the rules of law.

Point d: "Equal treatment without discriminating the country of origin" shall mean treatment principle of indiscriminative service based on the rules of law between domestic and foreign investors, as well as among foreign investors.

Point e: "Togetherness principle" shall mean the principle that encourages the role of the entire investors in the effort to realise people prosperity.

Point f: "Impartial efficiency principle" shall mean the principle underlining the investment implementation by prioritising impartial efficiency in the effort to realise impartial, conducive, competitive business climate.

Point g: "Sustainability principle" shall mean the principle that systematically tries to make the development process run through investment in order to secure prosperity and progress in all aspects of life for today and tomorrow.

Point h: "Environmental friendly principle" shall mean the principle where investment is made by continuously considering and prioritising environmental protection and preservation.

Point i: "Independency principle" shall mean the principle of investment made by continuously prioritising the nation and state potential without refusing the entry of foreign investment for the sake of economic growth realisation.

Point i: "Independency principle" shall mean the principle of investment made by continuously prioritising the nation and state potential without refusing the entry of foreign investment for the sake of economic growth realisation.

Point j: "Principle of balance of progress and national economic unity" shall mean the principle that tries to maintain the balance of regional economic progress within the national economic unity.

Paragraph (2): Self-explanatory

### Article 4

Paragraph (1): Self-explanator

Paragraph (2) Point a: "Equal treatment" shall mean that the Government shall refrain from giving different treatment to any investors that have made investment in Indonesia, unless otherwise specified by the rules of law.

Point b: Self-explanatory

Point c: Self-explanatory

Paragraph (3): Self-explanator

**Article 5**

Self-explanatory

**Article 6**

Article 6. Paragraph (1)

Paragraph (2): "Privilege" shall mean the one pertaining to custom union, free trade zone, common market, monetary union, institution of similar kind and agreement between Indonesian Government and foreign governments whose nature is bilateral, regional or multilateral with respect to certain privilege in organising investment.

**Article 7**

Paragraph (1): Self-explanatory

Paragraph (2): "Market price" shall mean the price determined according to method used internationally by independent assessor appointed by the parties.

Paragraph (3): "Arbitration" shall mean out-of-court method of settling civil dispute based on written agreement between the disputing parties.

**Article 8**

Paragraph (1): Self-explanatory

Paragraph (2): Self-explanatory

Paragraph (3): Self-explanator

Paragraph (4): Self-explanatory

Paragraph (5) Point a: Self-explanatory

Point b: Self-explanatory

Point c: Self-explanatory

Point d: In the event of loss suffered by the state, the Government may take legal action in form of, among others, warning, suspending, revoking business license, compensation claim, and other sanctions pursuant to the rules of law.

**Article 9**

Self-explanatory

**Article 10**

Self-explanatory

**Article 11**

Self-explanatory

**Article 12**

Paragraph (1): Business fields or types declared as being closed and being open with certain conditions will be arranged in Presidential Regulation compiled in a list based on classification of standard regarding business fields or types prevailing in Indonesia, i.e., classification based on the Standard Classification of Indonesian Business Fields (KBLI) and/or International Standard for Industrial Classifications (ISIC).

Paragraph (2): "Explosive equipment" shall mean the equipment used for the defence & security interest.

Paragraph (3): Self-explanatory

Paragraph (4): Self-explanatory

Paragraph (5): Self-explanatory

### **Article 13**

Paragraph (1): "Reserved business fields" shall mean special business fields allocated to micro, small and medium-sized enterprises, and cooperatives so that they are capable of and equal with the other economic players.

Paragraph (2): Self-explanatory

### **Article 14**

Point a: "Right certainty" shall mean Government's warranty to investors in obtaining rights so long as such investors have fulfilled their specified obligations.

"Legal certainty" shall mean Government's warranty in positioning the law and rules of law as the main foundation in every action and policy for investors.

"Protection certainty" shall mean Government's warranty to investors in obtaining protection in making investment activity.

Point b: Self-explanatory

Point c: Self-explanatory

Point d: Self-explanatory

### **Article 15**

Point a: Self-explanatory

Point b: "Company's social responsibility" shall mean the responsibility adhered to any investment companies in creating harmonious, balance relationship in accordance with the environment, value, norms, and culture of local community.

Point c: Investor activity report containing investment progress and the obstacles investor faces shall be submitted periodically to the Investment Coordinating Board and regional governments responsible for investment sector.

Point d: Self-explanatory

Point e: Self-explanatory

### **Article 16**



Self-explanatory

**Article 17**

This provision is meant to anticipate any environmental damage caused by investment activity.

**Article 18**

Paragraph (1): Self-explanatory

Paragraph (2): Self-explanatory

Paragraph (3) point a: Self-explanatory

Point b: Self-explanatory

Point c: Self-explanatory

Point d: Self-explanatory

Point e: "Pioneering industry" shall mean any industries possessing extensive connection, providing high value added and externality, introducing new technology, and possessing strategic value for national economy.

Point f: Self-explanatory

Point g: Self-explanatory

Point h: Self-explanatory

Point i: Self-explanatory

Point j: Self-explanatory

Paragraph (4): Self-explanatory

Paragraph (5): Self-explanatory

Paragraph (6): Self-explanatory

Paragraph (7): Self-explanatory

**Article 19**

Self-explanatory

**Article 20**

Self-explanatory

**Article 21**

Self-explanatory

**Article 22**

Paragraph (1) Point a: Hak Guna Usaha (Leasehold) is obtained and simultaneously renewed in advance for 60 (sixty) years, and it may be further renewed for 35 (thirty-five) years.

Point b: Hak Guna Bangunan (Building Rights) is obtained and simultaneously renewed in advance for 50 (fifty) years, and it may be further renewed for 30 (thirty) years.

Point c: Hak Pakai (Right of Use) is obtained and simultaneously renewed in advance for 45 (forty-five) years, and it may be further renewed for 25 (twenty-five) years.

Paragraph (2) Point a: Self-explanatory

Point b: Self-explanatory

Point c: Self-explanatory

“Extensive area” shall mean the wide area of land required for investment activity by considering population density, business sector or type specified through the rules of law.

Point d: Self-explanatory

Point e: Self-explanatory

Paragraph (3): Self-explanatory

Paragraph (4): Self-explanatory

#### **Article 23**

Paragraph (1): Self-explanatory

Paragraph (2): Recommendation is given after the investment has fulfilled the provision on foreign workers pursuant to the rules of law concerning manpower.

Paragraph (3): Self-explanatory

Paragraph (4): Self-explanatory

#### **Article 24**

Self-explanatory

#### **Article 25**

Self-explanatory

#### **Article 26**

Self-explanatory

#### **Article 27**

Paragraph (1): Self-explanatory

Paragraph (2): Self-explanatory

Paragraph (3): “Directly reporting to the President” shall mean that the Investment Coordinating Board is to carry out its duty and function, and to submit its accountability, directly to the President.

#### **Article 28**

Paragraph (1) Point a: Self-explanatory

Point b: Self-explanatory

Point c: In making the norms, standard and procedure, the Investment Coordinating Board shall make coordination with the relevant departments/ agencies.

Point d: Self-explanatory

Point e: Self-explanatory

Point f: Self-explanatory

Point g: Self-explanatory

Point h: Self-explanatory

Point i: Self-explanatory

Point j: Self-explanatory

Paragraph (2): Self-explanatory

#### **Article 29**

Self-explanatory

#### **Article 30**

Self-explanatory

#### **Article 31**

Self-explanatory

#### **Article 32**

Self-explanatory

#### **Article 33**

Paragraph (1): The objective of this paragraph is to prevent possible company's ownership by individuals normatively from happening, while other individuals materially or substantially own it.

Paragraph (2): Self-explanatory

Paragraph (3): "Tax crime" shall mean incorrect information on statement about tax collection by giving letter of notice, but the content is incorrect or incomplete, or by attaching incorrect information so as to inflict damage to the state, and any other crimes set forth in the rules of law concerning taxation.

"Marking up the recovery cost" shall mean any costs spent in advance by investor whose amount is unusual and then it is deemed to be expenses for investment activity at the time of determining the profit distribution with the Government.

"Findings by any authorized official" shall mean any findings leading to criminal element based on audit by BPK (State Audit Bureau) or other party authorized to conduct audit, which is then followed up in accordance with the rules of law.

#### **Article 34**

Self-explanatory

**Article 35**

Self-explanatory

**Article 36**

Self-explanatory

**Article 37**

Self-explanatory

**Article 38**

Self-explanatory

**Article 39**

Self-explanatory

**Article 40**

Self-explanatory

\* \* \*