ELUCIDATION
ON LAW OF THE REPUBLIC OF INDONESIA
NUMBER..... YEAR 2000
CONCERNING
CAPITAL INVESTMENT

I. GENERAL

As from the enactment of Law Number 1 Year 1967 regarding Foreign Capital Investment as amended with Law Number 11 Year 1970 and Law number 6 Year 1968 regarding Domestic Capital Investment as amended with Law Number 12 Year 1970, investment activities in Indonesia have developed quite well and are capable of giving important and strategic contributions in supporting national development.

National development requires funds in increasingly larger amount, considering that state and community needs are also becoming more various and increased. On the other hand, the existence of strong wishes of various nation components to reduce dependency on offshore loan as sources of national development funding has made the role of direct investment activities more important. The efforts to improve the role of both domestic and international business community in investment activities in Indonesia require the existence of attractive investment and business climate, which capable of providing protection and security as well as legal certainty on investment activities conducted in Indonesia.
Efforts to create a conducive investment climate have become more and more important considering that in order to attract capital investment, Indonesia is faced to increasingly larger and complex challenges and tighter competition both from fellow developing countries and developed countries, specifically in attracting foreign capital.

The participation of Indonesia in various bilateral, regional and multilateral cooperation forums on the basis of national interest has incurred various consequences that must be faced and abided by. The occurrence of strategic environmental changes within the Association of Southeast Asian Nations (ASEAN) region is marked with the application of ASEAN Free Trade Area (AFTA) on January 1, 2002 and the application of ASEAN Investment Area (AlA) on January 1, 2003. Other important development also occur in Asia-Pacific Economic Cooperation (APEC) forum or in Asia-Europe Meeting (ASEM) forum, as well as the execution of Agreement on Trade-Related Investment Measures (TRIMs) in the context of the establishment of World Trade Organization (WTO) on April 15, 1994 in Marrakech, Morocco.

In order to deal with the aforementioned developments in international cooperation and with due observance of the national interests, it is deemed necessary to stabilize and conduct review as well as adjustment to the provision concerning direct investment in Indonesia by stipulating a Law on Capital Investment for replacing Law Number 1 Year 1967 regarding Foreign Capital Investment as amended with Law Number 11 Year 1970 and Law Number 6 Year 1968 regarding Domestic Capital
Investment as amended with Law Number 12 Year 1970. This Capital Investment Law constitutes a reference for every direct investment activity conducted by Indonesian citizens, Indonesian business entities, foreign citizens or foreign business entities in Indonesia.

II. ARTICLE BY ARTICLE

Article 1

Number 1

Referred to as direct capital investment shall be that in which the investor directly bears his investment risk and is entitled to determine the management of the relevant company.

Number 2

Domestic capital shall be capital constituting part of the assets of Indonesian community, including international payment instruments, dividends, new discoveries, rights and movable and unmovable properties provided for establishing a business/company in Indonesia. Among these assets are land, building, timber in the woods, etc. The aforementioned assets may be owned by the state and national private entities either individual, Indonesian citizens, business entities, or legal entities, including cooperatives.

Number 3
Foreign capital shall be the assets of foreign citizens/foreign entities/foreign investment companies the entire capital of which originating from foreign sources, which may be in form of:

a. international payment instruments which do not constitute part of the Indonesian foreign exchange reserves, which with the approval of the government are used to finance corporate activities in Indonesia;

b. production equipment and material: for companies, including rights and new discoveries belonging to foreigners, imported from overseas into the Indonesian territory, insofar as the aforementioned equipment and materials are not financed from the Indonesian foreign exchange reserves;

c. part of the business proceeds in Indonesia basing on this Law shall be allowed to be transferred, however used to manage business in Indonesia.

Number 4
Self-explanatory

Number 5
Self-explanatory

Number 6
Self-explanatory
Article 2

Paragraph (1)

This law shall be applicable for all fields of business/capital investment activities, such as in the sectors of agriculture, forestry, industry, mining and energy, communication, tourism, post and telecommunication, trading, health, public work, manpower, education and culture, and other sectors which may occur as the consequence of new technological development and/or economic development. Whereas indirect investments, such as share purchase through capital markets as well as investment in the field of financial services and up-stream natural oil and gas businesses, shall be exempted from this Law.

Up-stream natural oil and gas business shall cover the activities of exploration, exploitation, field management, transportation, storage, and sales of crude oil and natural gas.

Paragraph (2)

Self-explanatory

Article 3

Paragraph (1)

Self-explanatory

Paragraph (2)
technological developments or other matters, may be subject to review.

Paragraph (3)
Self-explanatory

Article 5
Self-explanatory

Article 6
Self-explanatory

Article 7
Paragraph (1)
Classified as import duties shall be import tax, import Value Added Tax, and import Income Tax of Article 22.

Paragraph (2)
Self-explanatory

Article 8
Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory
Article 9

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 10

In context of the implementation of Law regarding Regional Government, the provision of facilitites and other facilities may be in form of Regional Taxes and/or Regional Retributions for certain fields of business and/or in certain regions may be given by Regency/Municipal Government in accordance with the applicable regulations.

Article 11

Paragraph (1)

With such equal treatment, companies shall have similar rights and obligations as those of foreign capital investment companies. The types of the aforementioned equal treatment are, among other things, the ability to enter into fields of business closed to foreign capital investment, ability to obtain domestic loan resources, and to obtain equal opportunities in participating in government project tenders.

Paragraph (2)

Self-explanatory
Paragraph (3)

Self-explanatory

Article 12

Paragraph (1)

The right to transfer in foreign exchange from foreign capital may be granted based on:

a. profits earned after deducted for taxes and other obligations in Indonesia,

b. compensation in the event of nationalization;

c. installment of loan principal and interest;

d. repatriation of capital;

e. other expenses, including royalties, and expenses concerned with foreign citizens employed in Indonesia.

Paragraph (2)

Implementation of transfers shall be effected by virtue of the provisions or regulations on foreign exchange trading issued by Bank Indonesia.

Article 13

Paragraph (1)

To ensure business certainty for domestic as well as foreign capital investment companies, the government shall not conduct nationalization, confiscation or any other forms of rights revocation, or any actions, which
may prejudice the rights to control and/or manage capital investment companies, unless it is in the interest of the state.

Paragraph (2)

Self-explanatory

Article 14

Paragraph (1)

Self-explanatory

Paragraph (2)

Self-explanatory

Article 15

Self-explanatory

Article 16

Paragraph (1)

Non-domestic/foreign capital investment companies shall be companies not subject to this Law.

Paragraph 2

Self-explanatory

Article 17

Paragraph (1)
In the context of the empowerment of national entrepreneurs, investment companies whose entire capital originate from foreign capital shall be obligated to grant the opportunity to Indonesian Citizens or national entrepreneurs to own part of their shares.

Participation of Indonesian citizens or national entrepreneurs in the aforementioned ownership of shares is expected to improve the capabilities of the community or national entrepreneurs in terms of technology, management and market access.

Paragraph (2)

Self-explanatory

Article 18

Paragraph (1)

Capital Investment Approval shall be the approval issued by Regional Governmental as well as Central Government Utnees authorized in the field of capital investment, as clearance in principle and fiscal facility, containing the capital investment provisions stipulated in the approval letter and shall also be applicable as provisional business license.

Implementation Licenses are, among other things:

- Licenses in the agrarian field
- Limited Importer Identification Number
- Licenses in the Manpower sector
- Licenses for the import of capital goods and/or raw materials.
Paragraph (2)

Self-explanatory

Paragraph (3)

Permanent Business License shall be the license, which must be possessed by companies to effect the proper commercial production activities as the executor of capital investment approval letter. For example, in the field of industry, it may be used to effect domestic purchasing and selling and export activities.

Paragraph (4)

Self-explanatory

Paragraph (5)

One stop service center shall be that capital investment licenses both in the form of capital investment implementation approvals as well as licenses concerned with the technical agency issued by government offices handling capital investment, both in the central government as well as provincial and regency/municipal governments, in reference to the principles of transparency, simplicity, convenience, speed and accuracy.

Paragraph (6)

Self-explanatory
Article 19

Paragraph (1)

Stipulation of the duration of foreign capital investment licenses shall commence as from the endorsement of the company's Articles of Association by the authorized offices.

Paragraph (2)

The duration of domestic capital investment in the form of legal entities or non-legal entities shall commence as from the issuance of foreign capital investment approval and shall remain applicable insofar as the company engages in its business activities.

Non-business entity shall be foreign investment companies in the form of individual Proprietorship or Partnerships (CV) or Firms (Fa).

Article 20

Paragraph (1)

This is intended to expand employment opportunities for Indonesian manpower.

Paragraph (2)

Self-explanatory

Article 22

Improvement of skills of Indonesian labors shall be by applying, among other things, the following methods:
Conducting transfer of technology;

- Encouraging the implementation of research and development (R&D);
- Mastering the blue-print of products produced by the relevant companies;
- Encouraging employees to make discoveries or innovations by using company facilities/equipment.

Article 23

Self-explanatory

Article 24

Paragraph (1)

Recording shall be conducted in order to find out the development of capital investment activities to foreign countries the funds for which originating from domestic sources, among other things, concerning the types of business activities and the amount of funds invested. In this matter, the Central Government agency responsible in the field of capital investment shall cooperate with Bank Indonesia to monitor the development.

Paragraph (2)

Self-explanatory

Article 25

Paragraph (1)
Periodic and continuous reports shall be submitted by foreign capital investment companies to the Government Agencies responsible for the field of capital investment both at the central as well as regional level, with a carbon copies submitted to Bank Indonesia, the Ministry of Finance and other technical/sectoral agencies related to the relevant business activities.

Paragraph (2)

Capital investment companies shall be obligated to satisfy and implement all provisions set forth in the capital investment approval letter and the provisions stipulated in the following regulations:

- Law concerning monopoly and business competition;
- Law concerning the environment;
- Law concerning manpower;
- Law concerning taxation;
- Law concerning intellectual property right; copyright, patents and trademark;
- Law concerning bankruptcy;
- Law concerning Limited Liability Company;
- and others.

Paragraph (7)

Capital investment companies shall also be obligated to manage and control companies in accordance with the principle of sound company
management and shall be responsible to shareholders and all parties having interests in the improvement of the company, including the local public at large (Good Corporate Governance), in addition to being obligated to satisfy and implement all provisions stipulated in accordance with the applicable laws and regulations.

Article 26

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Paragraph (3)
Self-explanatory

Article 27

Paragraph (1)
Self-explanatory

Paragraph (2)
Self-explanatory

Article 28

Paragraph (1)
Self-explanatory
Paragraph (2)

Letter a

The Government of Indonesia respects and honors various agreements in the field of capital investment or those related to the field of capital investment agreed and executed by the Government of Indonesia. Therefore, with the enactment of this Law, the aforementioned international agreements shall remain in effect. International Agreements in the field of capital investment or those related to the field of capital investment approved and agreed by the Government of Indonesia shall be, among other things:

a) Bilaterally shall be the Agreement Concerning Promotion and Protection of Capital Investment with 52 countries (up to and including March 21, 2000)

b) Regionally shall be Framework Agreement on the ASEAN Investment Area) signed on October 7, 1998 in Makati, the Philippines, and ratified under the Decree of the President of the Republic of Indonesia Number 29 Year 1999; Agreement for Promotion, Protection and Guarantee of Investments between member nations of the Organization of Islamic Conference, signed on May 1, 1983 in Jeddah, Saudi Arabia and ratified under Decree of the President of the Republic of Indonesia Number 57 Year 1983; and the agreement on the Promotion and Protection of Investments
among ASEAN nations, signed on December 15, 1987 in Manila, the Philippines, ratified by the Decree of the President of the Republic of Indonesia Number 22 Year 1998 and its amendment signed on September 13, 1996 in Jakarta, ratified under the Decree of the President of the Republic of Indonesia Number 167 Year 1999.

c) Multilaterally shall be the Agreement on Trade-Related Investment Measures/TRIMs in the context of the Marrakech Agreement Establishing the World Trade Organization, signed April 15, 1994 in Marrakech, Morocco and ratified under Law Number 7 Year 1994.

Letter b

Self-explanatory

Article 29

Self-explanatory

Ratified in Jakarta

On

PRESIDENT OF THE REPUBLIC OF INDONESIA

ABDURRAHMAN WAHID