

**SOME INSIGHTS AND IMPACT
OF 2010 NEGATIVE
INVESTMENT LIST**
for
ICP Castle Asia

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30 July 2010



COUNSELLORS AT LAW

INTRODUCTION

To be discussed:

- Background investment law
- Negative list specific-menu list
- General clauses & structural changes
- Tax & Incentives

for background information, Indonesian hierarchy of laws and regulations is as follows: (i) Constitution, (ii) Law/Government Regulation in lieu of law, (iii) Government Regulation, (iv) Presidential Regulation, (v) Ministerial Regulation, (vi) Regional Regulation

J.P. Morgan: “well, I don’t want a lawyer to tell me what I can not do. I hire him to tell me how to do what I want to do.”

REVISITING MAJOR ISSUES OF 2007 INVESTMENT LAW

- Prohibition for holding shares for and on behalf of foreign parties
- Grandfathering rules and more legal certainty for investors
- No longer (i) mandatory gradual divestment; and (ii) no major distinction between Foreign and Domestic Investment

REVISITING MAJOR ISSUES OF 2007 INVESTMENT LAW (cont'd)

- Clarification of Investment Coordinating Board status and roles
- Protection from nationalization *vis-à-vis* fair compensation for affected investors
- Guarantee of capital repatriation
- Introduction of Good Corporate Governance and Corporate Social Responsibility

REVISITING MAJOR ISSUES OF 2007 INVESTMENT LAW (cont'd)

- Impose obligation to consider traditions and culture surrounding communities
- Responsibility regarding abandonment and reclamation obligation
- Confirmation of various facilities, i.e. reduction of income
- Tax, import duty for capital goods and raw materials, value added tax for capital goods, accelerated amortization and depreciation, and reduction for land and building tax

WHAT THE 2010 NEGATIVE LIST OFFERS?

- Take out various line of business previously closed for foreign investment (e.g. postal, saccharine, small scale power plant, film/movie technical services, internet services provider, geothermal supporting services)
- The 2010 Negative List increases threshold of foreign participation in some areas (e.g. multi level marketing, large construction services, healthcare)
- Higher foreign ownership portion for ASEAN investors
- Simplified format of schedules (using ISIC reference) containing the list of closed lines of business and open lines of business with requirements

FOUNDATION OF THE NEGATIVE LIST (PP No. 76/2007)

Principles	Important Criteria
<ul style="list-style-type: none"> • Simplification • Compliance with international agreements or commitments • Transparency • Legal Certainty • The unity of Indonesia as a single market 	<p>Included in the Negative List, if :</p> <ul style="list-style-type: none"> • Market mechanism does not effectively reach goals • National interests can not be better protected through other policy instruments • Necessary for the protection of national interests and national entrepreneurs • Benefit of determination exceed the costs incurred

DIFFERENCES BETWEEN NEW AND OLD NEGATIVE LIST ON FOREIGN INVESTMENT OWNERSHIP IN CERTAIN SECTORS

The Negative List to me always reads a bit like the menu at Starbucks where there are simply too many options to choose from but none-other than a classic cappuccino- seems to fit what you are actually looking for. Also it is critical to determine exactly what is the actual line of business that an investor is going to conduct. For that, often critical to agree up-front the interpretation of the particular definition for the relevant line of business. Makes one think that it all depends on what the definition of “is” is. – Bill Clinton, but in different context though

DIFFERENCES BETWEEN NEW AND OLD NEGATIVE LIST ON FOREIGN INVESTMENT OWNERSHIP IN CERTAIN SECTORS

No	Business Field	Comparison		Note
		Neg. List 111	Neg. List 36	
1	Agriculture : Business of plantation with area of less than 25 Ha. E.g. oil palm, coffee, cocoa, tea, clove.	Reserved for micro, small, medium business and cooperatives (or “UMKK”)	Reserved for UMKK	No change
	Business of plantation with area of 25 Ha or more	Foreign capital ownership max. 95%	Foreign capital ownership max. 95%	No change
2	Forestry : Natural tourism, water tours, natural adventure tours, spelunking tours	max. 25%	max. 51%	
3	Electricity	Small-scale power generation – 10 MW, reserved for UMKK	-Power generation < 1 MV, reserved for UMKK -Power generation 1 – 10 MW, for partnership	
4	Geothermal	Not regulated	-Operating & maintenance services for geothermal facilities : max. 90% -Geothermal drilling services : max. 95%	

DIFFERENCES BETWEEN NEW AND OLD NEGATIVE LIST ON FOREIGN INVESTMENT OWNERSHIP IN CERTAIN SECTORS (cont'd)

5	Construction Services	<ul style="list-style-type: none"> -Small-class construction service : UMKK -Non small-class construction service : max. 55% 	<ul style="list-style-type: none"> -Construction services with simple tech/low risks/work value of up to Rp 1.000.000.000 : UMKK -Construction services with high tech/high risks/work value of more than Rp 1.000.000.000 : max. 67% 	
6	Trade	Direct selling : max. 60%	Direct selling : max. 95%	
	<p>Retail sale and wholesale on a fee or contract basis.</p> <p>Retail sale consists of, among others:</p> <ul style="list-style-type: none"> -Supermarket with retail space of less than 1,200 m2. -Minimarket with retail space of less than 900 m2. -Dept. store with retail space of less than 2,000 m2. 	100% Domestic Capital	100% Domestic Capital	No change

THE COMPARISON OF THE NEGATIVE LIST 111 AND THE NEGATIVE LIST 36 (cont'd)

7	Culture and tourism	-Art galleries : Max. 50% -Film technique services : domestic capital	-Art galleries : Max. 67% -Film technique services : max. 49%	
8	Transportation	All transportation sectors: max. 49%	Offshore sea transportation for passenger & freight : max. 60%	
9	Communication & Informatics	-Not regulated	-provider, manager, operations, tenant of telecommunication tower: 100% Domestic Capital	<i>Note:</i> Regulated before by Ministry of Comm. & Info.
10	Banking	Non-foreign exchange Bank, Syaria Non-foreign exchange Bank, money market brokers	-Non-foreign exchange Bank, Syaria Non-foreign exchange Bank, money market brokers : specific license -Conventional BPR Bank, Syaria Bank, foreign exchange.	need special license

THE COMPARISON OF THE NEGATIVE LIST 111 AND THE NEGATIVE LIST 36 (cont'd)

11	Telecommunication	No change	No change	No change
12	Health	Industries of finished drugs & drug raw materials : max. 75%	Pharmacy industries including drug raw materials industries : Max. 75%	<i>Note:</i> Regulated before by Ministry of Health
13	Culture & Tourism	Open for 100% Domestic Capital Financing for of motion picture advertising space (advertisements, posters, still photographs, slides, negatives, banners, pamphlets, balihos, folders, etc)	Open for 100% Domestic Capital Financing for of motion picture advertising space (advertisements, posters, still photographs, slides, negatives, banners, pamphlets, balihos, folders, etc)	No Change

DEVELOPMENT OF THE NEGATIVE LIST

- Negative List has been amended at least 11 times, since 1989
- Changes generally to further open the business climate to foreigner
- Within three years; three amendments; two amendments in 2007 and one amendment in 2010:
 1. Presidential Regulation No. 77 of 2007 (“Negative List 77”)
 2. Presidential Regulation No. 111 of 2007 (“Negative List 111”)
 3. Presidential Regulation No. 36 of 2010 (“Negative List 36”)

THE 2010 NEGATIVE LIST COVERING

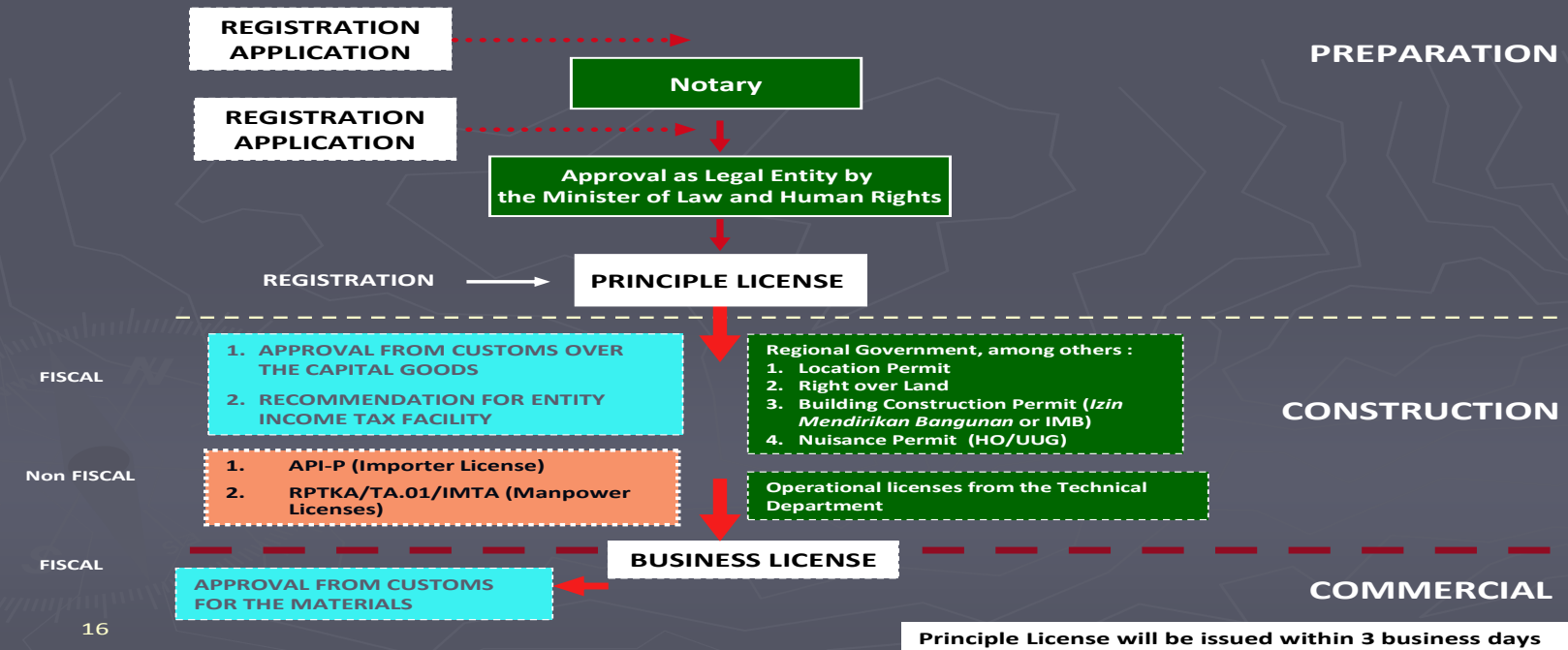
- General Norms
- Business Fields that are closed, and
- Business Fields that are conditionally not open, consisting of:
 1. Reserved for micro, small, medium business and cooperatives (or “**UMKK**”)
 2. Partnership : cooperation between UMMKK and big business (“big business” is not defining)
 3. Restriction for foreign ownership
 4. Specified location
 5. Special License/Permit

THE 2010 NEGATIVE LIST COVERAGING

Other than containing the business field provisions subject to restrictions, the 2010 Negative List introduces:

- The approved principle of "**grandfathering**" investments are not subject to the Negative List
- Result of mergers, acquisitions and consolidation
- Provisions relating to shareholding threshold due to rights issue and consequences
- Exceptions to portfolio investment

BKPM APPLICATION PROCESS



SAMPLE OF REGISTRATION APPLICATION

LAMPIRAN I
 PERATURAN KEPALA BKPM
 NOMOR : 12 TAHUN 2009
 TANGGAL : 23 DESEMBER 2009

(Investment Registration Application Form)

(APPLICATION FOR INVESTMENT REGISTRATION)

This INVESTMENT REGISTRATION is herewith submitted to the One Door Integrated Services Office for the purpose of investment under the Investment Law No. 25 of 2007.

I. DETAILS OF APPLICANT

If the company is not yet incorporated, then the applicant data should be filled out with all participant's data of the company which is about to be established.

1. Name of Company (tentative/fixed) * :
 2. Name of Applicant :
 3. Shareholding (s) :
- For foreign direct investment company only

a. Foreign Shareholder (s)	Address and Country of Origin	Rp/US\$ *	% **)
Sub Total			
b. Indonesian Shareholder (s)	Address	Rp/US\$ *	% **)
c. Total (a + b)			100%

*) stripe which is not applicable
 **) the percentage is upon the nominal share of capital not sheet of share

4. Correspondence Address :
 - Phone number :
 - Facsimile :
 - E-mail :
 5. Company's Deed of Establishment and its Amendment (Name, Notary and Date) and Legalization from the Minister of Law and Human Rights (Number and Date):
- Should be filled out if the company is already incorporated

II. DESCRIPTION OF INVESTMENT/PROJECT PLAN

If the proposed investment/project is planned to cover more than one sector/ line of business and/or planned to locate in more than one Regency/Municipality or more than one Province, then the investment/project plan (line of business, location, type/production capacity and investment funds) should be specified for each sector/ line of business and/or for each location.

- 2 -

1. Line of Business :
2. Project Location :
- Regency/Municipality :
- Province :
3. Annual Production :

Type of Goods/Services	(Standard Classification of Indonesia Business Field or ISIC)	Unit	Capacity	Remark

4. Investment (Rp/US\$ *) :
- *) stripe which is not applicable

III. STATEMENT

We acknowledge that this application has been properly and duly executed, signed by all applicants or their representative which is authorized by the Power of Attorney with sufficient stamp duty and We (the participants) are responsible for its accuracy, correctness and completeness including all attached documents/ data or submitted later.

.....20.....
 Applicant,
 Stamp Duty of Rp. 6.000,00

 Name and Signature

Attachment :

1. Letter of recommendation from the related country or letter which is issued by the Embassy/ Representative Office of the related country in Indonesia if the applicant is The Government of another country;
2. Copy of valid passport if the applicant is foreign individual;
3. Copy of Article of Association of the company in English or its translations in Bahasa from sworn translator if the applicant is foreign company;
4. Copy of valid Identity Card (KTP) if the applicant is Indonesian individual;
5. Copy of Article of Establishment of the company and any amendment (s) and approval form the Minister of Law and Human Rights if the applicant is incorporated under the law of Republic of Indonesia;
6. Copy of Tax Registration Code Number (NPWP) for the applicant, either for Indonesian individual or company which is incorporated under the law of Republic of Indonesia;
7. This application should be properly and duly signed with sufficient stamp duty by all applicants (if the company is not yet incorporated) or by the company's Board of Directors (if the company is already incorporated) attached with Power of Attorney with sufficient stamp duty from whom signs and or submits the application if the applicant is represented by another party (provisions concerning the Power of Attorney is strictly regulated in this regulation (article 63)

ATTACHMENT III
REGULATION OF THE HEAD OF THE
BKPM
NUMBER : 12 OF 2009
DATE : DECEMBER 23, 2009

APPLICATION FOR AN INVESTMENT LICENSE IN PRINCIPLE

This application for an INVESTMENT LICENSE IN PRINCIPLE is submitted to the One-Stop Office (PTSP) to obtain approval for investment facilities under Law Number 25 of 2007.

I. DESCRIPTIONS OF APPLICANT

1. Registration Number (if applicable)	:	
2. Name of Company	:	
3. Taxpayer Identification Number (NPWP)	:	
4. Deed of Establishment and its Amendments (Name of Notary, Number and Date)	:	
5. Validation of the Minister of Law and Human Rights (Number and Date)	:	
6. Full Address	:	
- Telephone Number	:	
- Facsimile	:	
- E-mail	:	

II. DESCRIPTIONS OF PROJECT PLAN

A. ACTIVITY PLAN

If a project is set to include more than one line of business and/or to be located in more than one District/City, the activity plan (line of business, locations, production, trade, land use, labor and investments) should be specified by each line of business and/or by each location.

1. Line of Business	:	
2. Location of Project	:	
Address	:	
District/City	:	
Province	:	

3. Annual Production :

Types of Goods/Services	ISIC	UNIT	Capacity	Remarks
.....
.....

4. Annual Trade:

Types of Goods/Services	Export (%)
.....
.....

Estimated Export Value per annum : US\$.

5. Acreage of Land needed : m²/Ha*)

*) Cross out as appropriate.

6. Indonesian Workers : person(s)

7. Investment (Rp/US\$)*)

a. Fixed Assets	:	
- Land Purchase and Clearing	:
- Structure/Buildings	:
- Machines/Equipment and Components	:
- Others	:
Sub total	:
b. Working Capital (1 turn over)	:
Total**)	:

*) Cross out as appropriate.

***) Including the value of machines/equipment and components to be imported.

8. Project Completion Time Schedule : months(s)

(Counted from the date the License in Principle is issued)

B. CAPITALIZATION PLAN

I. Source of Financing (Rp/US\$)*)

a. Equity Capital	:	
b. Reinvested profits	:	
c. Loans	:	
- Domestic Loans	:	
- Offshore Loans	:	
Total**)	:	

*) Cross out as appropriate.

***) The amount of source of financing shall be equivalent to the amount of planned investments.

2. Capital of Company (Rp/US\$)*)

a. Authorized Capital	:	
b. Issued Capital	:	
c. Paid-up Capital **)	:	

*) Cross out as appropriate.

***) The paid-up capital shall be equivalent to the issued capital.

3. Capital Placement in the Company

a. Foreign Participant	Rp/US\$*)	%**)
Sub Total		
b. Indonesian Participant	Rp/US\$*)	%**)
c. Total (a + b)***)		100%

*) Cross out as appropriate.

***) The percentage shall be a nominal value of share capital, not a share.

****) The total capital placement in the company shall be equivalent to the paid-up capital.

III. STATEMENTS

1. If in the future this project results in adverse impacts to the public and the environment, we are liable to bear any consequences arising therefrom and pay any compensation to the public.
2. We declare that we have properly made this application, which is duly signed by the authorized person(s) on a stamp of sufficient value, and we shall account for it at any time, including documents/data attached hereto or subsequently submitted.

..... 20

Applicant

Signature/Stamp of Rp6,000

.....
Name and Title of the Signer

ATTACHMENTS:

1. Applicant's Evidence of Identity:
 - a. A copy of the Registration for entities that have entered registration.
 - b. A copy of the Deed of Establishment of the company and its amendments.
 - c. A copy of the Validation of the Articles of Association of Company from the Minister of Law and Human Rights.
 - d. A copy of the Taxpayer Identification Number (NPWP).
2. Descriptions of activity plan:
 - a. Descriptions of activity plan: the production process including the types of raw materials along with the process flowchart.
 - b. Descriptions of the business activities of the service sector.
3. A recommendation from the relevant agency, where required.
4. This application that is signed across the stamp of sufficient value by the board of directors of the company, accompanied by a Power of Attorney with a stamp of sufficient value for an application not submitted in person by the board of directors of the company (the requirements for powers of attorney are governed by Article 63 of this Regulation).

SAMPLE OF BUSINESS LICENSE APPLICATION

ATTACHMENT XIII
REGULATION OF THE HEAD OF THE BKPM
NUMBER : 12 OF 2009
DATE : DECEMBER 23, 2009

**Format of Application for Business License
For Companies Located Outside the Industrial Estate**

**APPLICATION FOR BUSINESS LICENSE
FOR COMPANIES LOCATED OUTSIDE THE INDUSTRIAL ESTATE**

I. DESCRIPTIONS OF APPLICANT

1. Name of Company :
2. Number & Date of Registration/
Investment License in Principle :
3. Line of Business :
4. Taxpayer Identification Number :
5. a. Deed of Establishment and its Amendments:
(Name of Notary, Number & Date) :
- b. Validation of the Minister of Law and
Human Rights (Number and Date) :
6. Address of Head Office :
- Telephone Number and :
- Facsimile :
- E-mail :
7. Address of Project Location/Factory :
- Telephone Number and :
- Facsimile :
- E-mail :

II. REALIZATION OF PROJECT

If the realization of project is set to include more than one sector and/or is to be located in more than one District/City, the activities (line of business, locations, production, trade, land use, labor and investments) should be specified in accordance with the Approval Letter.

1. Production Capacity and Trade per annum:

Type of Goods/Services*)	Unit	Capacity**)	Export	Remark
.....
.....

**) In the case of trading sector, the types of traded goods should be stated*

***) Based on the calculation of the installed capacity for industrial sector*

2. Export Value per annum : US\$
3. Start Date of Production :
- Month :
- Year :
4. Project Investment (Use Currency as stated in the Approval Letter)
 - a. Fixed Capital :
 - Land Purchase and Clearing :
 - Structure/Buildings :
 - Machines/Equipment & Spare Parts :
 - Others :
 - Subtotal :

- 2 -

- b. Working Capital (for 1 turn over) :
- Jumlah :
5. Land Use : m2/ha***)
***) Cross out as appropriate
6. Sources of Financing
 - a. Equity Capital :
 - b. Reinvested Profits :
 - c. Loan Capital :
 - Total :
7. Capital of the Company :
 - a. Authorized Capital :
 - b. Issued Capital :
 - c. Paid-up Capital :
8. Workers : Foreign Indonesian
 - a. Management of Company:
 - PT. : Commissioner :
 - Director :
 - Koperasi : Management:
 - b. Professional :
 - Manager :
 - Expert :
 - c. Blue Collar Worker :
 - Total :
9. Capital Participation in the Company
To be completed for Foreign Investment Companies only

a. Foreign Participant	Rp/US\$	%
.....
.....
Sub Total
b. Indonesian Participant	Rp/US\$	%
.....
.....
c. Total (a + b)****)	100%

*****) The total of capital participation in the company shall be equivalent to the authorized capital*

III. STATEMENT

We declare that we have properly made this application, which is duly signed by the authorized person(s) on a stamp of sufficient value, and we shall account for it at any time, including documents/data attached hereto or subsequently submitted.

..... 20

Applicant

Stamp of Rp6,000

.....
Full Name, Signature, Title,

- 3 -

Seal of Company

ATTACHMENTS TO APPLICATION:

1. A Project Inspection Results Report that is signed by the Team of Project Inspection Results Report, in the special case of business activities that involve import duty facilities for imports of goods and materials;
2. A copy of the deed of establishment and its validation as well as the amended deed and its validation by the Department of Law and Human Rights;
3. A copy of the Investment Registration/Investment License in Principle/License in Principle: Investment Expansion/Investment Approval Letter/Business License and/or Approval Letter of Investment Expansion/Business License: Expansion held;
4. A copy of the Taxpayer Identification Number;
5. Proof of land possession/use in the name of the company:
 - a) a copy of the land certificate or deed of land sale and purchase by the Land Conveyancer; or
 - b) a copy of land lease agreements.
6. Proof of structure/building possession/use:
 - a) a copy of the Building License; or
 - b) a copy of the deed of sale and purchase of/lease agreements of structure and buildings.
7. A copy of the Nuisance License (HO) or a copy of the Place of Business Permit;
8. A copy of the Investment Report of the second half year;
9. A copy of the approval/validation of the Environmental Impact Assessment or a copy of the approval/ratification of documents of the Environmental Management Effort and the Environmental Monitoring Effort;
10. Other required documentation as governed by regulations of the relevant technical agencies and/or local regulations;
11. This Application that is signed across the stamp of sufficient value by the board of directors of the company;
12. A Power of Attorney with the stamp of sufficient value, for applications that are not submitted in person by the board of directors of the company.

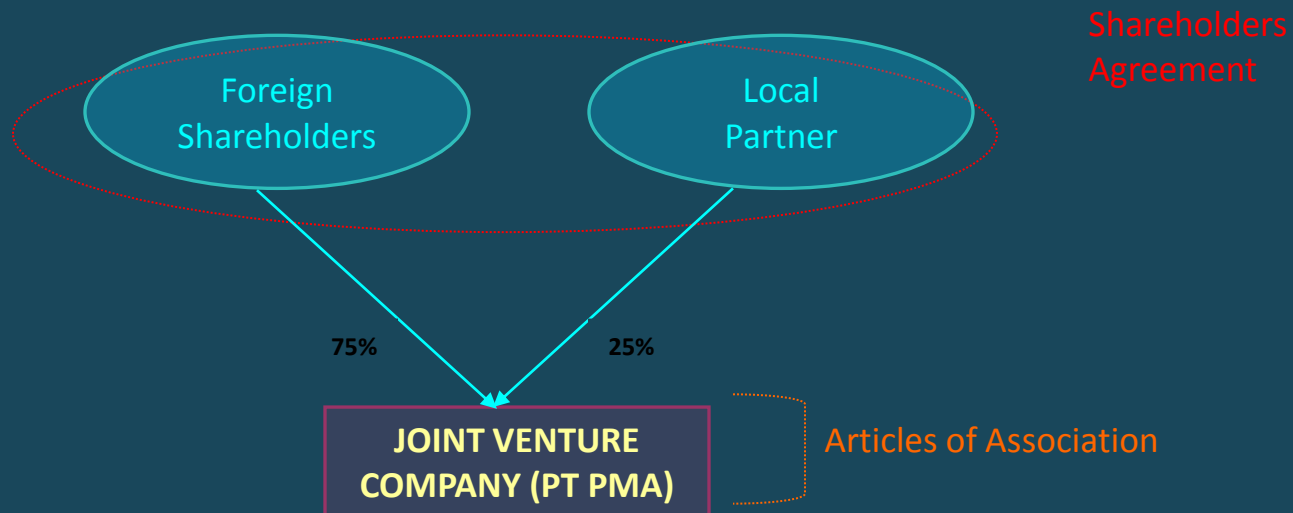
CLASSIC FOREIGN INVESTMENT STRUCTURES

Joint venture (Articles of Association and Shareholders Agreement)

- Contractual arrangement for local portion shareholding
- Classes of Shares (A and B shares /voting and non voting, dividend structure)
- Venture capital
- Listed Company

CLASSIC FOREIGN INVESTMENT STRUCTURES (cont'd)

I. Joint Venture



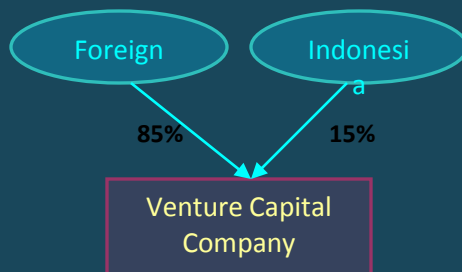
CLASSIC FOREIGN INVESTMENT STRUCTURES (cont'd)

II. Articles of Association

ARTICLES OF ASSOCIATION

- ❖ Shares A –voting Rights
Shares B – Non-voting Rights
- ❖ Dividend subject to General Meeting of Shareholders (GMS) ---◇ *de facto* majority decide on dividend, i.e. the Shares A

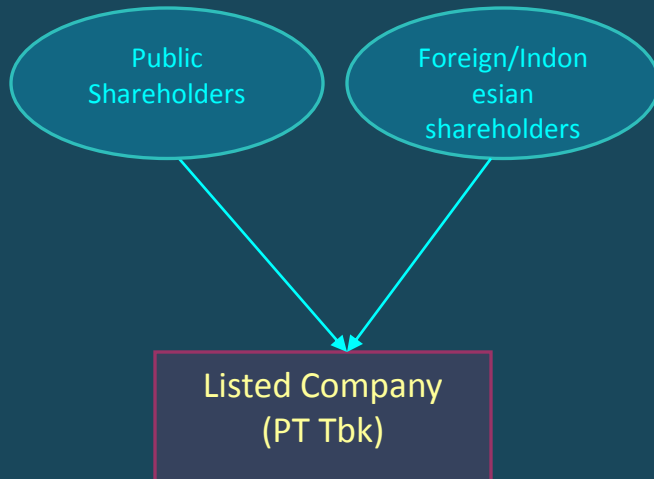
III. Venture Capital



- ❖ Maximum foreign ownership is 85%
- ❖ Divestment Issue

CLASSIC FOREIGN INVESTMENT STRUCTURES (cont'd)

IV. Listed Company



- ❖ Minimum shareholders is 300 parties
- ❖ Listing requirements:
Net tangible assets no less than IDR100 billion and number of parties as shareholders no less than 500 parties

GRANDFATHERING

- The 2010 Negative List confirms that restrictions in the 2010 Negative List do not apply to investments that have been approved before the issuance of the 2010 Negative List
- However, not clear whether applies only to businesses with existing investment amount and therefore the 2010 Negative List may apply if there is an extension

RESULT OF MERGERS, ACQUISITIONS AND CONSOLIDATION

In the event an investment company conducts:

1. merger
2. acquisition; or
3. consolidation

the restriction of foreign investment in

1. the surviving company
2. the acquiring company; or
3. the new company (as a result of merger)

should be in line with the 2010 Negative List

RESULT OF MERGERS, ACQUISITIONS AND CONSOLIDATION (cont'd)

Problems:

1. not clear the term of control in company law therefore possible two (or more) controlling shareholders (each of them has different line of business) in one foreign investment company after acquisition by one
2. not clear whether applies to indirect acquisition
3. no protection for minority interest

RIGHT ISSUE AND SELL DOWN OBLIGATION

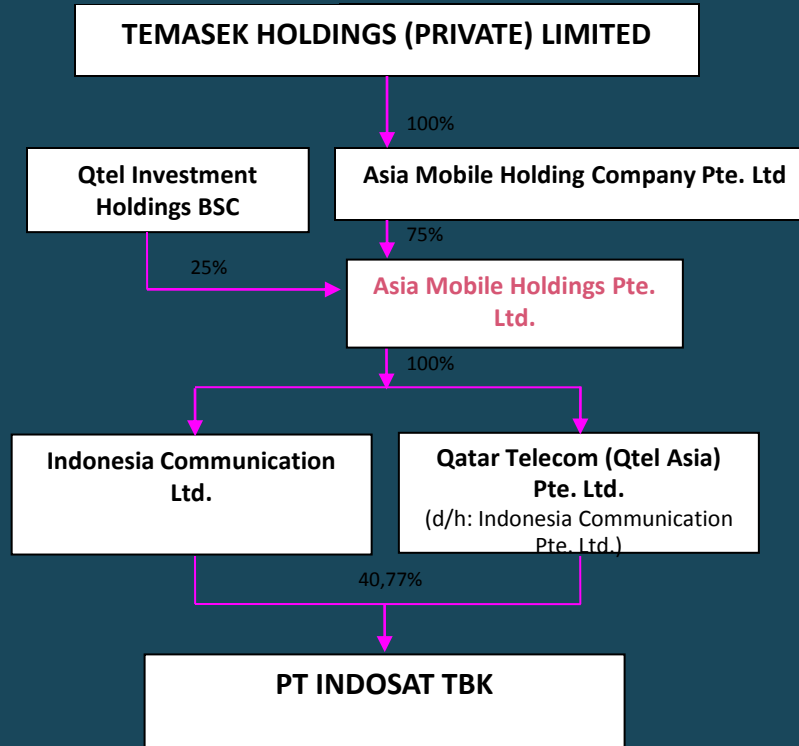
- The 2010 Negative List provides opportunities for foreign participants to exceed the threshold for foreign participation due to **rights issue** in certain circumstances, with the condition that sell down should be done two years after the rights issue as follows:
 1. Divestment to domestic party;
 2. Sell through public offering;
 3. Buy back by the company (treasury shares)

ABSENCE OF CONTINGENCY PLAN AFTER TWO YEARS

- Not clear if no buyer is available after two years
- Restriction of treasury shares under company law (only 10% and 3 years max)
- Not clear whether allowed to do another rights issue to be fully subscribed by local investor in order to meet foreign participation threshold (instead of the sell down by foreign investors)

QTEL CASE EXAMPLE

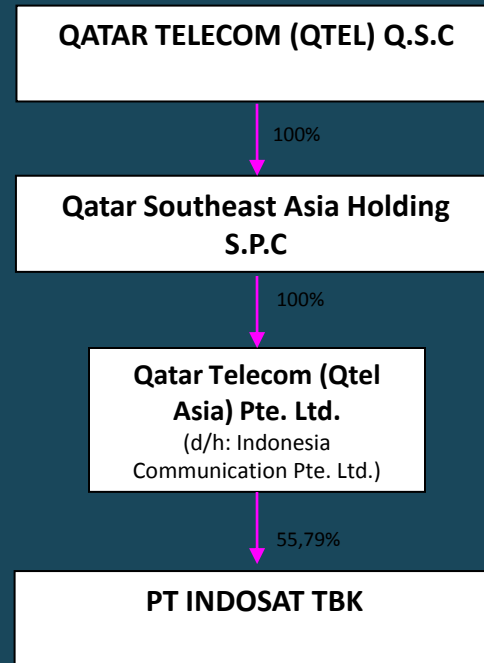
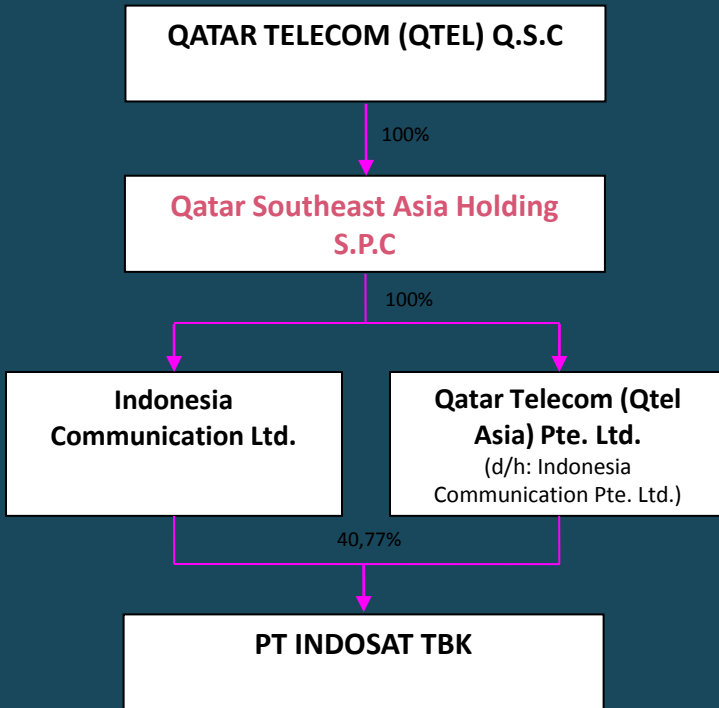
Year 2007



QTEL CASE EXAMPLE

Year 2008

Year 2010



UNCERTAINTY OF PORTFOLIO INVESTMENT

- Elucidation of Article 2 of 2007 Investment Law mentions that indirect and portfolio investment are not within the scope of 2007 Investment Law
- Implementation of policies and regulations before and after 2007 Investment Law indicate that foreign-controlled public companies are not affected by restrictions of the Negative List

UNCERTAINTY OF PORTFOLIO INVESTMENT (cont'd)

1. Provision of Presidential Decree 17/1986, as amended by Presidential Decree 50/1987, stipulates that foreign investment company owned by 45% local and has offered 20% to the public will be considered as domestic investment company. This provision has never been revoked
2. Article 4 of the 2010 Negative List and Investment law: the Negative List provisions do not apply to indirect investments or portfolio transactions conducted through the domestic capital market

UNCERTAINTY OF PORTFOLIO INVESTMENT (cont'd)

- However, press release by Chairman of Investment Coordinating Board stated that indirect investor/portfolio is an investor who does not participate as a controlling shareholder
- These discrepancies can create confusion and cause investors to doubt legal certainty in Indonesia
- **Suggestion:** Investment Coordinating Board shall issue a decree to clarify the interpretation of portfolio investment, rights issue, controller, acquisition, and public company

ANTICIPATION OF POSSIBLE HURDLES AND INCONSISTENCIES

- Unclear status of a public company which is partially owned by foreign investor and/or a public company as shareholder of foreign investment company
- Unclear effect of non-voting shares in the calculation of limitation of foreign ownership
- Unclear status of venture capital and mutual funds in the form of PT (legal entity)
- Unclear indirect acquisition of a foreign investment company

ANTICIPATION OF POSSIBLE HURDLES AND INCONSISTENCIES

- Unclear status of subsidiaries of a domestic company which is subsequently converted into a foreign investment company
- Central and Regional Investment Coordinating Board: better coordination and understanding of their respective roles
- Lack of implementing regulations of the law; unclear status of earlier implementing regulations under old negative list and investment law
- Instead of talking about hurdles and inconsistencies one could also picture a discussion with the officer in the field as follows: “these are my principles. If you don’t like them I have others.” – Groucho Marx

ANTICIPATION OF POSSIBLE HURDLES AND INCONSISTENCIES

<p>Gov. Regulation 20/94</p>	<p>Gov. Regulation 83/2001</p>	<p>Presidential Decree 17/1986</p>	<p>Investment Coordinating Board Decision Letter 15/1994</p>
<ul style="list-style-type: none"> • The obligation to divest after 15 years • Purchasing of local shares by foreigners without changing the status of all their business fields : open to foreigners 	<ul style="list-style-type: none"> • Purchasing of local shares by foreigners without changing the status as long as their business fields are open to foreigners 	<ul style="list-style-type: none"> • As amended by PD 50/1987 • Foreign Capital Investment owned by 45% local, with requirement that 20% from total shares (after IPO) : treated equally with Domestic Capital Investment 	<ul style="list-style-type: none"> • The obligation to divest after 15 years

EXEMPTIONS/REDUCTIONS OF CORPORATE INCOME TAX

- *in a definite amount*
- may only be granted to *a new investment*
- *a pioneer industry* → (i) an industry with wide-ranging links, (ii) gives added values and high externality, (iii) introduces new technology
- *has strategic values for the national economy.*
- These exemptions/reductions have not been effective → there are no implementing regulations to date

CUSTOMS DUTY RELIEF/EXEMPTIONS FOR REPLACEMENT OF MACHINES/CAPITAL GOODS

- For ongoing investments that are *replacing machines or other capital goods.*
- Existing regulations prior to 2007 :
import of machinery and materials in the framework of development or expansion
 → 5% import duty, or can be less if the import duty for a particular product is less than 5% as stated in the Import Duty Book Tariff.

New Income Tax Incentives For Investments

(Summary of GR 1 of 2007, as amended by GR No. 62 of 2008)

Income tax facilities that are extended include:

- a. *Reduction of net income* → 30% of the total investments, deducted for 6 years, each of which by 5%
- b. *Accelerated depreciation or amortization, as follows:*

Category: Fixed Tangible Asset	Useful Life	Rate of depreciation and amortization under methods of :	
		Straight Line	Declining Balance
I. Nonbuilding			
Category I	2 years	50%	100% (charged directly to income)
Category II	4 years	25%	50%
Category III	8 years	12,5%	25%
Category IV	10 years	10%	20%
II. Building			
Permanent	10 years	10%	-
Nonpermanent	5 years	20%	-

New Income Tax Incentives For Investments (cont'd)

- c. *Imposition 10% income tax on dividends* → paid to nonresident taxpayers, or otherwise a lower rate, subject to the prevailing Tax Treaty
- d. *Extended loss carry forward of more than 5 years but less than 10 years, with an additional period of 1 year if:*
 - (i) newly investing → in industrial estates and bonded zones
 - (ii) employing min. 500 all-level Indonesian workers → for 5 consecutive years
 - (iii) investing/expending min. Rp10,000,000,000 → in economic & social infrastructure in business locations
 - (iv) expending min 5% of the investments (within 5 fiscal years) → in domestic research & development costs; and/or
 - (v) using min. 70% of raw materials and/or components of domestic products since the fourth year



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THANK YOU

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