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Role of an Indonesian Notary in the Making of Deeds for Foreign Investment Corporations

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GOLDEN GATE UNIVERSITY

SCHOOL OF LAW

LL.M. INTERNATIONAL LEGAL STUDIES



THESIS:

THE ROLE OF AN INDONESIAN NOTARY
IN THE MAKING OF DEEDS FOR FOREIGN
INVESTMENT CORPORATIONS

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IN THE MAKING OF DEEDS FOR FOREIGN INVESTMENT
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CHAPTER I

INTRODUCTION

It is interesting to observe that the position of an Indonesian Notary is currently becoming typically Indonesian and unique in the ASEAN region.

It is unique because Indonesia, as will be described and explained in the next chapter, is a pluralistic legal system while from notarial law point of view Indonesia is a Civil Law Country as the Indonesian Notary has its origin in the Netherlands which is a Civil Law Country, often characterized as Roman Dutch system.

After the creation of the Indonesian State on January 1st 1800, the Dutch introduced Notary as a legal institution and a public officer around 1820, with an Instruction from the Dutch Governor General based on Governor General's Resolution number 8 of 7th March 1922, when the European community was expanding rapidly and becoming big and active in socio-cultural and business life.

However, according to history, the first Dutch Notary in Indonesia was known to be appointed in 1620 by the so-called "Governor General" of the Dutch East India Trading Company (VOC).

But at present, due mainly to the effects of modernization of the Indonesian community, Notary as a legal creature has become practically

an Indonesian social, economic and legal institution, and firmly forms an integral part of Indonesian social, economic and business life.

The position of notary in neighboring countries, Singapore and Malaysia, which are in principle Common Law Countries is different. The Philippines may indeed be a Civil Law country like Indonesia, but due to American occupation after the Spanish colonizers have been defeated, the position of Notary in the Philippines, after the Spanish colonizers have been defeated, is American in system, whereas the United States is a Common Law country.

As far as foreign investments in Indonesia are concerned, most of the foreign investors coming to Indonesia are from Japan (civil law country), United States (common law country), Hong Kong (common law country), The Netherlands (civil law country), Germany (civil law country) and Australia (common law country).

First of all, it should be noted that in all investment matters, foreign as well as domestic, the Notary in Indonesia plays a very important role, as many deeds should be made by or through the Notary for reasons that will be explained below.

Generally speaking, his role is becoming more and more important in Indonesian community life itself, namely with the rise in living conditions and of the standards of living of Indonesians in general.

It is generally accepted as a fact that the more prosperous a community grows, the more complex the community life patterns will become, the more "contract-based" the social and economic relationships will be, and the more important the role of the Indonesian Notary in the daily life of the people will be, particularly in the cities and towns. This is

indeed the case in Indonesia after 1975 when the results of the first Repelita (five year development plan) became apparent.

After 1985, the above-mentioned role of Indonesian Notary has become even more important ever since the advent of the globalization era and the initiation of the Second Period of the 5-Year National Development Plans (REPELITA) series in Indonesia (the so-called PJPT II).

The Sixth REPELITA of Five Year National Development Plan (1994-1999), the first in the Second Period of series of five REPELITAS (5-year national development plans) series, which started last year, is called "the years of the economic take off", and is considered crucial in terms of foreign investments.

In this era, the Indonesian Notary as a Public Officer really has to participate very actively, by introducing the Indonesian legal system to the foreign investors, and explaining to them the existing investment general and legal on investments, established by Law number 1 of 1967 Concerning Investment, as amended by law number 11 of 1970 Concerning Amendment and Supplement to Law Number 1 of Concerning Foreign Investment.

The Indonesian Government policy on Shares in Foreign Investment Corporations is laid down in Regulation Number 20/1994.(Government Regulation of The Republic of Indonesia Number 20 of 1994 On The Share Holding Ratio in Companies Incorporated Under The Foreign Investment Program)

Besides, there is the Decree of the Minister for Investment/Chairman of the Investment Coordinating Board Number

15/SK/1994 concerning Share Ownership's in Foreign Capital Investment Companies.

As is well known, Indonesia has to compete with other Asian developing countries to attract foreign capitals as much as possible. One of the important favourable factors for foreign investments is the political stability under the active personal guidance and leadership of President Suharto.

But there are other "plus factors" as well, e.g. a progressive macro-economic policy, an open foreign exchange system, with freedom for anyone to transfer any amount of foreign currency and business net profits earned, an average 5 % annual economic growth, the availability of relatively cheap skilled labour, reasonably good geographic and economic infrastructure, a fast improving and expanding international and national telecommunication system, and a fast growing international, national and local banking as well as general and social insurance, and financial services system.

Most of the foreign investors are active through many kinds of joint ventures and joint operation projects, which should be arranged with notarial deeds and contracts for the safety of the capital involved. In this matter the Indonesian Notary who is, as has been mentioned above, a public officer in Indonesia, has in many cases to play an active role.

Many Indonesian notaries are or have to be well-educated, not only in Law and legal matters, but sometimes also in financial matters, accounting, and development economics. Some are also well-informed in matters of technology and intellectual property .

The Indonesian Notary has a moral obligation to help and legally to protect the foreign investor's capital and equity against possible fraudulent practices of their business partners in their foreign or joint investment corporations.

One of the very difficult problems, for instance, is how to arrive at the most acceptable or proper composition of shares.

A Notarial Deed is the most important legal document in Indonesia. It has absolute authenticity by Law, and is the best guarantee for foreign investors to safeguard their business and financial interests, inter alia concerning business taxes, transfer of profits, and dealings with public accountant reports.

Every foreign investment project has to be approved by the President of the Republic after a rather intensive sometimes lengthy process conducted or controlled by the State Minister for Foreign Investment/Chairman of the Investment Coordinating Board. In this process, a Notarial Deed plays a very important role, particularly in the formation and establishment of a foreign investment corporation which should meet all legal requirements set out by the Foreign Investment Law and the relevant Presidential executive decrees.

In this matter, the Indonesian Notary again has to play an active role in advising, explaining the legal rules, and helping Foreign Investors in the drafting of articles of association of the Foreign Investment Corporation, so that they receive the best legal construction to safeguard their investments.

CHAPTER II

POSITION OF NOTARY IN INDONESIAN LEGAL SYSTEM

a. Indonesian Legal System

On paper, Indonesia is a Civil Law country as it is a former colony of the Netherlands, which is a civil law country, but in practice, Indonesian Private Law is pluralistic in nature. Besides modern private law derived from or based on the Dutch Civil Code (*Burgerlijk Wetboek* or BW) and the Dutch Commercial Code (*Wetboek van Koophandel* or WvK), there are : (a) the *Hukum Adat* or Adat Law, the indigenous Indonesian (more or less tribal) unwritten "customary" Law on marriage, property law, heritage, on debts and loans, and on Adat property; and (b) *Hukum Islam* or unwritten Muslim Shariah Law on marriage, marriage property, and in inheritance. Both the civil and commercial codes are Dutch translations from the French *Code Civil* and the *Code de Commerce* in 1838.

Indonesian Public Law (Constitutional Law, Administrative Law, Local Government Law, Taxation Law, and Penal or Criminal Law) is modern, written and homogeneous in character throughout the country.

The rules concerning the legal status and position of the Indonesian Notary form part of Administrative Law as the Indonesian Notary as

a public officer is appointed by decree of the Minister of Justice and like a senior civil servant, must retire at the age of 65. His field of authority however is limited to Private Law and in making deeds, he is subject to the limiting provisions of any statute law and acts of parliament.

Indonesian Private Law is hither to pluralistic and very complex. This is the consequence and continuation of the policies of the former colonial government.

During the colonial period, based on article 163 of the Indische Staatsregeling (colonial constitution) all persons living in Indonesia were (and on paper still are) classified into three groups, as follows :

1. Europeans (orang Eropah, European)

This group includes :

(a) Dutch, and all other persons whose "origin" are European, i.e.

"born in Europe or descended from European stock";

(b) Japanese;

(c) Persons who in their native country are subject to family laws

"similar" to Dutch laws, e.g. Australians, New Zealanders,

Canadians, White South Africans, Americans, etc;

(d) Persons who by decree of the Governor General have the same

"status" as Dutch ("gelijkestelden");

(e) Legitimate or properly "recognized" children of persons belonging

to group a,b,c and their descendants.

2. Natives (pribumi, inlanders).

This group includes all persons of the indigenous population of the Indonesian archipelago, and Eurasians whose father is a Native and not filing a request for "Dutch Status".

3. Foreign Orientals (orang Timur Asing, Vreemde Oosterlingen).

to this group belong all persons not categorized into group 1 or 2, and that means : Chinese, Arabs, Indians, Pakistani inhabitants, etc.

The above "colonial" classification of citizens or inhabitants is still valid up to the present, although the general socio-cultural situation in Indonesia has already changed considerably since national independence, and is now still changing very rapidly.

Before World War II, the changes were due to modernization of social institutions, modern education, and continuing rise in prosperity of the indigenous people.

After national independence, particularly after 1950, the Republic of Indonesia aimed at creating equality before the law for all ethnic groups, due to the progress in modern education, the advent of globalization of lifestyle and social behaviour patterns, and higher prosperity as well as higher standards of living. Particularly the effects of the enactment of many "integrative" Laws after 1966 (beginning of the Suharto Era) are quite extensive, such as the National Law on Marriage, revised interpretation of the National Basic Agrarian Law of 1960, the National Banking Law, the Law on Citizenship and Naturalization, which integrate the different legal norms of Dutch Civil Law, Adat Civil Law and Modern Muslim Law.

With the application and implementation of these laws in daily life, by and large, the "gap" in legal status between the three groups of citizens is narrowing rapidly, and the use of the so-called "Intergentile Law" to

solve formerly legal collisions or "inter-legal-order conflicts" between members of the three above-mentioned "legal-order" groups is almost redundant.

One day soon there will only be the existing difference between Nationals (whatever their ethnic or racial origin) and Foreigners or Aliens.

All Nationals and Indonesian Citizens in general (including foreigners with "residence" status) will receive the same treatment and will be equal before the same Indonesian Law.

b. The Position of Indonesian Notary

General Consideration:

Although the bill of a new Law for Notaryship has been submitted to the Parliament in 1979, the position of the Indonesian Notary is still based on Article 1 of Law number 3, 11th. January 1860, called in Dutch "Reglement op het Notarisambt in Indonesie".

Article 1, of this Ordinance concerning the Office of Notary in Indonesia, reads as follows :

"Notaries are public officers exclusively authorized to issue authentic deeds of all acts, agreements and arrangements, provided by Law or as wished by parties concerned that there shall be a written documentation with the proper authenticity, to date the deeds officially and to keep them carefully, and when or wherever needed issue engrossment's, copies and abstracts of them, provided that no other public officer or person is authorized for it by Law."

It is therefore apparent that there is in Indonesia (as is the case in Netherlands, Belgium, Germany and France) only one kind of notary,

namely what in the United States is called "notary public".

There is no "notary private" in Indonesia like that in the United States.

Every candidate for Notary in Indonesia has to have a Law degree (SH = Sarjana Hukum) plus a Diploma in Notary (two-year university study program), and then submit an application to hold his office as a Notary to the Minister of Justice.

The Minister of Justice will then decide on the place (city or town) and on the area of jurisdiction attached to the appointment of the candidate as Notary. In many cases, the young candidates have no free choice concerning their placement as the number of Offices in every city or town is limited.

The Rules every Indonesian Notary has to follow in performing his public function are still the same as those as are established by Law (Reglement) number 3 - 1860 mentioned above as long as the Bill of Law for a new set of Rules for Notaryship is still pending consideration and approval by parliament.

The 1860 "Reglement" on the Office of the Notary consists of 66 Articles, and contains, inter alia, 39 kinds of penalties, and sanctions which are to be imposed in the form of fines, indemnification, compensation for deprived monetary gains or interests, if the Notary violates or acts contrary to those Rules and causes damage or financial loss to his Clients.

The 39 kinds of penalty include 3 cases that can cause loss

of authority of office, 5 cases that can result in his discharge from office, 9 cases where he can be suspended from office for three to six months, and 22 cases for which he may be fined.

Starting the office

Before assuming his public office, an Indonesian Notary, has to take an Oath according to Article 17, swearing to God in the presence of a Priest before the District Judge or District Government, to pledge loyalty to the Republic of Indonesia, its laws and the Government, to fulfill his duties with the utmost sincerity, honesty, conscientiousness, punctuality, and impartiality, to obey all laws and regulations of the state, to uphold the utmost confidentiality of the content of the deeds made at the request of Clients in accordance with the Law, and that he has obtained his appointment as Notary in the most proper way.

It is obvious that the job or office as Notary in Indonesia is a post of very high responsibility, and as Indonesia is a developing country, also in terms of legal system, administration, administration of justice, and administration of security, the job is full of problems, risks and threats.

As already mentioned before, the Indonesian Notary is, except where the Laws in certain instances stipulate otherwise, the only Public Officer who has the authority to issue or make authentic deeds concerning acts, agreements, as provided by Law or wished by the parties concerned in which there shall be a written documentation with the authentic power.

The Notary amid the community

An Indonesian Notary is under the supervision of Supreme Court and a National Council of Notaries, and has to perform his official

functions in accordance with his Oath and with the rules laid down by Law number 3/1860 mentioned above.

He performs his mission amid a cultural and business community so immensely varied in terms of race, ethnicity, religion, occupation, level of education, and profession.

He has to maintain his dignity, his good name, and the quality of his work, his skills, his knowledge, his experience, and his expertise. He is not allowed to enter any kind of business or activities that may be incompatible with his professional Oath and Code of Ethics.

The fees and rates he may charge his Clients are determined in principle by the Ministry of Justice and revised from time to time.

Social and legal roles of the Notary

An Indonesian Notary has a social role to play in the community to which he is assigned, and particularly as an actor in matters of Private Law, i.e. Civil Law (burgerlijk recht, hukum perdata) and Commercial law (handelsrecht, hukum dagang). But even as ordinary member of the community, he has an important social role to play, as someone who is professionally or profession-wise familiar with many formal legal problems in family life as well as in business activities.

A Notary is in the society usually known as someone who is and has to be honest, reliable, and impartial in cases of conflicts. It is therefore naturally that many people, his clients or their friends and their relatives come to him for legal advice when they face problems where agreements, contracts, documentation, legalization, or identification matters are involved.

The levels of education and modern civilization of the Indonesian community in the cities and towns have already reached or passed such a point that life is becoming increasingly and rapidly more and more complex each day.

As one of the consequences, more and more people now feel the need for a kind of legal certainty in their social and business dealings. They are now asking the Notary to draw up their wills, bequests, legacies, benefactions, donations, etc.

Indonesian Notaries are now involved in sweepstakes, lotteries, prize or bonus drawings, and even in sports tournaments where honesty and fairness are at stake.

Authority to make authentic deeds

Under Article 1 of Law number 3 - 1860, an Indonesian Notary is the only public officer who has the authority to issue or to make deeds with full authentic power, unless there are other Laws which in specific instances may designate another public authority to have that power also.

According to article 1868 of the Civil Code, any authentic deed shall be:

1. Made or executed "by" or "in the presence of" a designated Public Authority, in this case the Notary;
2. Made in the format and/or form as provided by law. In a case where the Public Authority concerned is a Notary, then the notarial authentic deed shall meet the requisites and provisions of article 24 and article 25 of Law number 3 - 1860, which read as follows.

Article 24 provides, that “the appearer(s) or party(-ies) should be known to or by the Notary, or made known to the Notary by the two witnesses who meet the requirements to qualify as being honest and reliable”.

Article 25 provides that all notarial deeds shall contain :

- a. first name, or surname, occupation and social position, address or domicile of every appearer and his or her representatives, along with their occupation and social position, and their home address;
- b. the capacity in which they act, according to their title or position, as well as their proxy or other arrangement made;
- c. Christian name or first name, name or surname, occupation and social position, as well as the home address of every witness;
- d. the place, day of the week, month and year of the drawing of the deed.

As far as the form or format of the notarial deed is concerned, it consists of three parts : (a) the Heading (b) the Body, and (c) the Closing. The (a) the Heading and the (c) the Closing are mandatory “formalities” concerning the Notary’s intentions, and the form is called “Akta Pejabat”, literally “the deed of the public officer”.

In the (a) the Heading of this “Akta Pejabat”, the Notary confirms that the Deed is made on the Day, Date, Month and Year as written, in the presence of the duly authorized Notary, duly witnessed by two persons known to the Notary. The whole writing is meant as a “minute” of the Deed and finished or completed at the office of the Notary on the Day and Date as mentioned in the (a) the Heading. After the whole writing has been read from the beginning to the very end to the Appearers by the Notary himself personally, and duly witnessed by two persons as

mentioned in the Heading, all the persons present, the Appearers, the Notary and the two Witnesses have to sign the (c) the Closing (akhir Akta) of the Deed and thus turning the notarial deed into an authentic legal document.

The (b) Body is called "Akta Partij", literally "Deed of the Parties".

This (b) Body contains the substance of the "real" statements concerning the agreements and arrangements made or achieved by or between the contracting or negotiating Parties concerned. In other words, the Body is a type of dictum of the Deed.

3. Every Public officer should have the authority to make, or let make in his presence, a Deed with authentic power.

As far as the Notary is concerned, he is only authorized to establish Deeds in his own legal district or jurisdiction, as assigned to him and determined by the Minister of Justice at the time of his official appointment.

The authority or competence of an Indonesian Notary covers four things, namely :

a. He should verify that he has the authority to make or establish the intended Deed.

This is necessary as not all public officers have the authority to make all kinds of authentic deeds, which could be an exception prescribed by a certain Law. For instance, the authority to make a Deed for the establishment of a Public Company Ltd. is only assigned to the Notary.

On the other hand, the Notary is not authorized (even forbidden) to issue Birth, Marriage or, Death Certificates. The public officer concerned is the Registrar for Civil Affairs (Burgerlijke Stand, Kantor Catatan Sipil);

- b. The Public Officer should have the due authority to serve the category of persons who request him to make a deed.

In the case of the Notary, the provisions of article 20, Law number 3 - 1860 apply, which preclude him from making a Deed where he himself, his wife, his direct or indirect relatives (vertically without limit, horizontally to the third degree), personally or by proxy, are involved. The reason of this provision is that the Notary should be absolutely impartial and objective in making the deed;

- c. The Public Officer before making a Deed, should make sure that he is indeed authorized in terms of place or location of the Deed.

For Instance, a Jakarta Notary is not allowed to go to the nearby town of Bekasi to make or to issue a Deed there;

- d. The Public Officer, before making an authentic Deed, should make sure that he is indeed authorized or has the competence to perform that act,

i.e. :

- i. that he is officially not "on leave";
- ii. that he is not discharged or suspended from duty;
- iii. that he has already taken his Oath officially as Notary;
- iv. that he has already officially announced his assumption of duty as Notary to the public.

After verification, the Notary is then officially, duly and fully authorized to make authentic deeds concerning all acts, agreements and

arrangements, which are provided by Law or requested by the parties concerned that the matters should or shall be documented by form of an authentic notarial deed.

In modern business community life in Indonesia today, almost every act, agreement and arrangement, as desired by parties concerned, individuals or companies, who are active in trade, the legal provision regulating it belong to the category of Private Law.

The main sources of Indonesian Private Law are the Civil Code [Burgerlijk Wetboek (BW), Kitab Undang-undang Hukum Perdata or KUHPer.] and the commercial Code [Wetboek van Koophandel (WvK), Kitab Undang-undang Hukum Dagang or KUHD]. The above two-mentioned codes are of Dutch origin, translated from the French Napoleonic codes *code civil* and *code de commerce*. As the Netherlands and France are civil law countries, we can safely state that Indonesia, seen from its modern private law, is also a civil law country.

But due to the recognition and existence of Adat Law and Islamic Private Law in Indonesia, we can also say that Indonesia is a country of pluralistic legal system.

However, most of the activities of an Indonesian Notary are in the field of modern private law, although the possibility still remains that certain Adat Law rules, and maybe in the future also certain Muslim Law rules, may be accepted in notarial contracts, as Indonesia, based on articles 1320 and 1338 of the Civil Code, has an "open" contract law system. It means that the content of any contract in Indonesia,

theoretically, is up to the wishes of parties, as long as nothing in the agreement is in violation of any existing Law, morals or the teachings of a generally recognized religion.

But the fact remains that the modern Indonesian business community is now using the Civil Law system (Civil Code and Commercial Code) as the quality of this law is international and acceptable to the international business community, while the Dutch legal terms are now translated into Indonesian and English.

What is meant by an "authentic deed" is explained in article 1868 of the Civil Code in general, without details concerning the public officer concerned, his authority, and the format of the deed. That is the reason why Law number 3 - 1860 on Notaryship is seen as the elaboration of the operating rules concerning article 1868.

According to article 1870 of the Civil Code, the notarial deed which is an authentic deed is considered the most powerful document before the court. Besides his authority to issue authentic deeds, an Indonesian Notary also has the same authority as his counterpart in Common Law countries, namely to legalize and to register private deeds.

By and large the task of an Indonesian Notary is quite different from that of a Notary in common law countries where he is not a public officer in the Indonesian legal sense. In these common law countries, the main mission and authority of the Notary are to act as witness and to legalize agreement papers or someone's signature, while the contract is drafted by Lawyers. The Indonesian Notary on the other hand, is not only doing the same task as the common law Notary, but also has to prepare and to draw up all kinds of agreements, legal acts and arrangements

which he will execute as provided by Law or as requested by the parties concerned.

In small towns for instance, where there is no Public Auctioneer, an Indonesian Notary is authorized by Law to act as Auctioneer.

Those are the reasons why the role of a Notary in a Civil Law country like Indonesia is far bigger and more influential than his name sake in Common Law countries.

It can also be said that the position of a Notary in the Indonesian community is quite dominant. He has to maintain a very high reputation, has great (rather heavy) responsibilities, and receives his authority directly from the Executive (Minister of Justice) which is entrusted to him by Law.

He has to take an official Oath and therefore enjoys the confidence of the community. He is particularly trusted by the Indonesian business community which needs his support and protection. This is a very important factor, because it is the Indonesian business man who is inviting most of the foreign investors to Indonesia. Foreign investments are badly needed to make the PJPT II (the second series of five-year development plans or REPELITAS), a success in terms of higher economic growth, higher level of prosperity and standards of living, capital formation, and higher public savings through higher national income from taxes.

Public opinion regards the Indonesian Notary as trustworthy. This is so because of a careful selection of candidates and a close supervision through a strict disciplinary system. He is be accountable in cases of

business conflicts, to help solve problems, especially in lawsuits before the court where the value of notarial deeds are at stake.

With the authority entrusted to him by the Government, an Indonesian Notary can even settle disputes between contending parties and make or issue an authentic settlement deed which is accepted by or is acceptable to the Court, because it provides a relief of the judge's burden and shortens the court process. The Judge can endorse a verdict of the same content as the notarial deed of settlement. After such a verdict confirming the settlement deed, the parties cannot appeal to a higher court.

As a supervisor of the notaries, the judge is very gratified if the parties are willing to reach a settlement through a Notary. Contending parties are even encouraged by the courts to do so, as such a settlement relieves the Judge of a considerable part of his burden, and helps reduce his backlog.

Very often, when there are parties to the dispute who are seeking a ready solution from a Private Law Court, the Judge will advise them to go to a Notary.

The Judge gives full support to the Notary, and expects him to do his utmost to induce the parties to resolve their conflict without much delay, and persuade them to sign a notarial settlement agreement as soon as possible.

The trust of the community in the Notary in Indonesia in handling private law conflicts is indeed implicit. During the discussions and deliberations, both parties are assisted by their respective Lawyers. The Notary can be fully trusted, particularly as and when very important

original documents, land title certificates, bank money transfer forms, and so on, are to be given in deposit. Then the Notary is, as such, the most reliable public officer. The Notary as a mediator will eventually return all documents safely to the rightful owners after the settlement agreement.

But when neither party wishes to entrust the conflict to a Notary, then the only recourse is adjudication by the Court, which is a very lengthy and costly affair. Almost no businessman in Indonesia would prefer to have the court settle their disputes. They either go to a Notary or to an arbitration board.

The procedure for the settlement of conflicts through a Notary is usually practical, speedy, and conclusive. Parties may not be quite satisfied with the notarial solution, but most of them still go to the Notary, as based on Article 1313 of the Civil Code, any agreement made in the presence of a Notary in the form of an authentic notarial deed has the same power as a statute Law binding as between the parties concerned.

Besides, Article 1870 of the Civil Code declares an authentic notarial deed to have absolute evidential value in court cases where there is some doubt about the authenticity or genuineness of a document or a personal statement. This provides legal certainty sought by members of the community and businessman in the conduct of their affairs.

The position of a Notary in Indonesian community is still very strong. The implementation of many laws and regulations involves the participation of a Notary, even in tax and tax dispute, e.g. the notarial legalization of a company's annual and accounting report. Many Notaries in Indonesia double function as a Land Title Registrar (PPAT) or

Property Title Registrar. All land transactions should be documented by Deed of a PPAT. The Official title is "PPAT/Notary". Even the transactions concerning buildings with a "land certificate" are now documented through the PPAT/Notary.

When foreign investors need land to lease or to rent (in Indonesia it is called "purchase of a land title"), the Notary is involved from the very beginning : verifying the legality of the status of a plot of land examining the land title owner's identity, application for "location license" of the project, negotiations concerning the price of the plot of land per square meter, the land transaction agreement documentation, the transfer of ownership of the land title, the application for issuance of the land title certificate to the Minister of Land Affairs, the application for a land-use permit, and eventually the application for construction and building license, all requiring the services of a PPAT/Notary.

Even in the process of applying for a loan by a Foreign Investor (PMA) to a financial institution bank, or leasing company, a Notary is involved : to draft and draw up the loan agreements, the lease agreements, and the fiducia-property deeds. Even personal guarantee agreements are often set up by a notarial deed.

If in the guarantee agreement a certain plot of land is involved, then the PPAT/Notary has to act, for only the PPAT has the legal authority to establish land title-transaction agreements. However, questions relating to a land title certificate belong to the exclusive competence or absolute jurisdiction of the Local Bureau of the Minister for Land Affairs, although the Land title-transaction agreement deed

executed by the PPAT form the basis for the issuance of the Land title certificate.

Even the financial institutions place so much trust in the Notary/PPAT, that his notarial deed for the land title-transaction-agreement is considered to be such value as a collateral for a loan. Of course this trust is based on the assumption that the PPAT/Notary will always do his utmost to obtain the genuine official Land title certificate as soon as possible, and that he will then submit the Certificate immediately or directly to the financial institution concerned.

Commencing January 1st 1995 the Finance Ministry also has, to rely on the Notary in the execution of the new Income Tax Law; that is to say Notary will not arrange any transfer of ownership of stocks listed at the Stock Exchange before the due taxes are fully paid.

Similarly the Minister of Finance expects that a Notary/PPAT will not arrange any transfer of land title-ownership before the 5 % income tax is duly paid to the treasurer.

Such is the overall picture concerning the position of an Indonesian Notary in Indonesian Legal System.

CHAPTER III

THE PROFESSION AND ROLE OF NOTARY IN INDONESIA

a. The Profession of Notary

It is apparent from Chapter II that the Notary Profession in Indonesia is held in very high esteem and that it requires the highest sense of responsibility and absolute trustworthiness.

Therefore the selection process of candidates for Notary is very rigid and has been so since well before war, even in the 19th Century.

The main criteria for eligibility are : personality, character, no criminal record whatsoever, adequate general and professional knowledge, at least two years practical experience working in a locally renowned Notary's office.

After the selection and final examination the nominated candidate will be appointed as Notary by the Minister of Justice.

Basic Education Requirement:

To qualify as " Notary Candidate " one has to have a " state's " Law degree (SH) from a state (public) or private Law school, plus, a two- year (4 semesters) postgraduate Notary Study Diploma of a State University accredited by the Minister of Justice and the Minister of Education. After at least two-years of practical training or working

experience with a locally renowned Notary, the candidates may apply for Notaryship in a place, city or town where there is vacancy for a Notary.

The first Indonesian Notary.

According to history the first Notary in Indonesia was a Dutch, named Melchior Kerchem. He was appointed in Batavia (now Jakarta) by the "Governor General " of the Dutch East India Company (VOC) on 27 August, 1620 after the declaration of Batavia as " Capital ".

The name " Batavia " was officially given to the " Capital of East India " ("Oost Indie " in Dutch) on 4 May, 1621.

The Notary was declared " public officer " and had to take an official Oath in the presence of the Governor General.

The Notary Profession Today.

Today the Indonesian Notary is a " public officer " since 1860, and has to take his Oath in the presence of the District Court or District Governor.

The law governing the office and profession of Notary is Public Law as he is a public officer, but in his profession he is practically and solely only concerned with matters of Private Law.

The Oath which the Notary has to take consists of two parts, namely :

- (1) Oath of Loyalty to the Republic of Indonesia, to the Constitution of the State of 1945, and to respect and obey all lawful Instructions given to him by the Courts and all other relevant Public Authorities;

- (2) Oath of Adherence to the Rules and Ethics of his Job, and that he shall perform all his duties with the utmost sincerity, honesty, cares, punctuality and strict impartiality, and that he shall obey and heed all Rules and Regulations concerning his Notaryship of the present and of the future, and that he shall uphold the utmost confidentiality of the content of all the deeds he may make, all things mentioned shall be in accordance with the Law.

The Oath he has taken compels the Notary to keep everything recorded in his deeds strictly confidential in accordance with article 40 of Law number 3- 1860.

Article 40 forbids the Notary to issue engrossment, copies, and extracts of deeds, or to show to or to inform people about the content of deeds other than the ones who are directly concerned with or related to those deeds, including their heirs, and eventual beneficiaries of legally obtained rights, except where the Law provides otherwise.

To keep everything confidential in regard to the contents of deeds and all information he may have entrusted to him by Clients. This is not required as of right or out of kindness, but it is his duty, and it is in his own interest.

Article 1909 of the Civil Code provides that everybody who has the legal capacity to do so must act as witness and to bear witness before the Court, except those who are not allowed by Law to provide any information whatsoever. The obligation to serve as a witness and to bear witness does not apply to Notaries who by Law are exempted from this duty. The Notary belongs to a category of exempted persons, particularly if and when the evidence sought concerns or will concern the contents of

his deeds. Even in criminal cases tried before the Court, a Notary has the right to refuse to appear if it concerns the contents of his deeds or otherwise prejudices his duty to remain silent.

One of the main reasons why the Notary has the right to refuse to appear before the Court is that he should not in any way lose the confidence or trust of the community. The Notary is the only public officer entrusted with the task of protecting the interests of the people and the community. He is a person that everybody can trust and to whom people can come and ask for help, assistance of advice whenever needed.

To remain silent and not to provide any information is for the Notary not only a right, but also a duty imposed by article 1909, paragraph 3, of the Civil Code. This article provides that certain persons have the right to withdraw from testifying as a witness and in the case of the Notary this is based on article 17 (Notary's Oath) and article 40 (prohibition to give information concerning the contents of deeds) of Law number 3-1860.

Nevertheless, a Notary may decide to give information if he is of the opinion that a higher level of interest than that of the client concerned should be served, or if the Law provides that the Notary is exempted from his duty to be silent in certain cases, e.g. Tax matters.

The Right To An Official Seal

As the Notary is a public official of the Republic of Indonesia, and has authority given to him by the Minister of Justice as part of his official

appointment, he has the right to have a Seal of the Republic of Indonesia, bearing his complete Name, Office and Place of the Domicile.

He therefore represents the Government of the Republic of Indonesia in the making and issuance of his deeds bearing Seal, which consequently gives the notarial papers the same degree of authenticity as any other official authentic papers or documents issued by other public officials.

As mentioned earlier in chapter II, all notarial deeds should meet certain requirements, including a certain format, and should be evidenced by two Witnesses who should have no family-relationship whatsoever with the Notary.

All notarial papers should bear the complete name of the Notary and his Place of Office (Domicile). An Acting Notary should also mention the date and number of the ministerial decree with which he has obtained the authority to act pro tempore on behalf of a Notary in absence.

As previously stated, a notarial deed is valid if it bears or contains the following :

1. the first names, surnames, occupations or social positions and domiciles of all parties or persons who are present before the Notary, while proxies should also mention their occupation or social position, and domiciles;
2. proxies should state in which capacity or function they act, specifying the data concerning their letter of proxy or arrangement of which they act;
3. first names, name, occupations or social position, and domicile of witnesses, and specifying the capacity or function in which they act;
4. place, day of the week, month and year of execution of the deed.

The text of the notarial deed should consist of full sentences and written in full, no abbreviations and or open spaces between words and or sentences are allowed. Unavoidable open spaces should be filled up with adequately thick ink-lines before finishing the deed, so that no addition can be made.

For a notarial deed to be legally valid, every alteration or addition if any should be written by the Notary by hand in the margin of the page or the deed verified and initialed by all persons present and involved, the Notary and witnesses included.

Appearers are free as far as the language of the deed is concerned, provided that the language is fully understood by the Notary. Before undersigning, the (draft, minute) deed should be read out in full by the Notary himself to the Appearers and Witnesses, while corrections and additions as and when desired by the relevant parties or persons should be made and written by the Notary himself immediately opposite in the margin of every page and exactly on the same horizontal line as the words in the sentence concerned.

All notarial deeds should be made in the form of a "minute", an original draft of a deed of contract. All minutes of every month are then bound up or collected into one book. The Indonesian Notary also has to keep a Repertory in twofold, recording daily every deed he has executed, and an alphabetical Index he has to keep every month, recording the names of all persons involved in every deed during the relevant month (and year).

Within two months (January - February) at the beginning of every year an Indonesian Notary has to present the duplicate copy of his

Repertory to the Clerk (Secretary) of the relevant Court of Justice (Panitera Pengadilan Negeri). This presentation is to be made a special notarial " Deed of Deposit" for the record, signed by Clerk of the Court and the Notary or his proxy.

The Notary in Indonesia has to uphold his Dignity and his Office as Notary at all times. He has to be careful not to get involved in any undignified, let alone criminal case, not only as Notary but also as a common private person. Any violation of the law, or any indecent behavior of the Notary, if discovered or reported, can be cited by the District Attorney or the Court of Justice as a ground to have him reprimanded, and in more serious cases he may be suspended from office for three to six months. If he is punished on account of a criminal act he may get discharged from office definitely.

According to the Law on the Administration of Justice, every Notary is supervised by the relevant President of the Court of Justice or Chief justice, who has to report everything important to the Supreme Court. This is understandable as the Indonesian Notary has to be one of the main advisers to the Community and should therefore have to maintain a clean and respectable reputation.

b. Active Role of the Notary as Legal Adviser

It may be evident from article 1 of law number 3 - 1860 that the Indonesian Notary is the only public officer in the Indonesian Community who has the exclusive authority conferred upon him by the Minister of Justice on behalf of the President of the Republic of Indonesia where by to issue authentic deeds relating to all kinds of acts, agreements and

arrangements, as provided by Law or requested by the parties or persons concerned that there must be a written documentation with the proper authenticity. All deeds should be duly dated, registered in a Repertory, and the names of all persons involved recorded in an alphabetical Index, and then carefully and safely kept.

That is the basic original idea about the role of the Indonesian Notary, but through the years, due mainly to the ever changing circumstances and steadily increasing complexity of the modernizing Indonesian community, his role has become in practice by and large much broader and more varied.

Through the increasing complexity of social and business relations between the ethnically and educationally varied members of the community, many legal problems arise. Curiously enough, many people go to the Notary for legal advice. This may be because the Notary is in the eyes of the people in general, one of the public officers who can reasonably be trusted, as his acts, his behavior, and his deeds are constantly under control from authorities and members of the community, particularly his clients. Besides, Indonesian Notaries today are in general well educated and well trained in Law and in solving legal problems, particularly those who have to deal with foreign investment matters.

In this era of globalization, with annual economic growth more than six percent, more and more people in Indonesia are involved in international trade and business. For their contracts they need the Notary, as legal adviser and as deed maker. They need to borrow more capitals from banks and other financial institutions, and here again they need the Notary as legal adviser and deed maker for loan agreements.

They need the Notary for bank guarantees, and for the binding agreements of collateral.

The Indonesian government expects that the Notaries actively participate in the creation of the favorable foreign investment climate in Indonesia in general, although not allowed to enter actively into any kind of business, they should have a lot of general knowledge about local national and international business.

Notaries today should be able to understand important economic situations, particularly where legal problems are involved. They are also required at present to be familiar with legal problems of leasing, of franchising, of joint ventures, of intellectual property (patents, trade marks, subsidiaries, etceteras), of industrial and housing estates.

Some Notaries are necessarily required to have general technical knowledge about containers and freight forwarding matters of many kinds of insurance, particularly in transportation. This is also true of labor problems and labor disputes where notarial deeds in many cases are needed.

A very important problem for foreign investors coming to Indonesia is how to obtain land the safest way. As Conveyancer (PPAT), the Indonesian Notary has to acquire good knowledge pertaining to land rights and land use problems, and to protect his clients from defective titles overcumbranch.

Land Law, or the so-called Agrarian Law, in Indonesia is quite difficult, to many people even confusing. Some Notaries in Indonesia are also public officers as Conveyancer (PPAT/Pejabat Pembuat Akta

Tanah), and he really need to master Land Law and its problems in practice, so that he can advise his clients particularly foreign investors, regarding acquisition of title to land and other related matters and save them from getting into conflicts or troubles because of mistakes or wrong advises.

Although an Indonesian Notary, who is at the same time a Coveyancer (PPAT), should have a thorough knowledge of "agrarian" law or land rights matters, he should limit his activities and his role to advising and making the proper and rightful deeds for transactions regarding the use of land. Real legal problems are for Lawyers to handle, with whom the Notary should have good relationship. But the analysis of legal problems and the formulation of a good Legal Opinion are the functions of Lawyers. Although many Notaries, who are also invariably Law graduates, have the capacity to act as lawyers, but because of the Notary Oath they are not allowed to do so. They must confine themselves to pure "Notary" work which is already broad enough in Indonesia today.

c. Passive Role as Deed Maker.

The role as deed maker is called "passive" as in this matter the Notary should conduct himself objectively, impartially, and remain silent throughout the process of deed making. He is not allowed "to influence" the opinions of the contracting or deal making parties.

He can, however, give them a warning if their opinions or ideas contradict or are against the Law, e.g. Violate the provisions of articles

1320, 1321 and 1338 of the Civil Code when the Deed is about a Contract that is being negotiated by parties.

In his passive role, the only thing the Notary is allowed to do is writing down the wishes of both contracting parties, and put them in the right form and format of a Deed. During the deed making process he should really remain silent and passive, letting the parties negotiate with each other, and then write down everything or anything they have agreed upon, except if the formulations or their wishes are against the Law, then the Notary have to refuse to execute that Deed, and give them advice on the alternatives.

After the signing of the minute (draft) Deed, and making of due payments, the Notary will provide all parties concerned with official copies of the Deed that constitutes the contracts or agreement.

The Notary has to keep everything secret from everyone except parties concerned. Inquiries that may come up from the public or from authorities about the contents of the deeds should be answered by the parties concerned themselves, and nothing, not the slightest information, can be obtained from the Notary.

From all the deeds he made the Notary has to develop system of a Repertory with an alphabetical, Index, for future retrieval if a party is in need of an engrossment or a copy of a deed, etceteras.

All notarial papers and deeds are to be kept in a safe place. The Notary is fully responsible for their safety in the general sense of the word, and should therefore take the appropriate precautionary measures.

CHAPTER IV

DEEDS

According to Indonesian Law there are two categories of Deeds, namely Private Deeds (*onderhands akten, akte di bawah tangan*) and public or official Deeds (*openbarte akten, akte resmi*).

In the narrow sense of the word, Deeds are legal documents designed to function as proof or testimony of or about a certain legal act (*rechtshandeling, perbuatan hukum*) that has taken place.

Deeds may contain a statement, a will, a settlement, an arrangement, a deal, an agreement, a purchase, and so on, in short, any written document intended by the person concerned to have legally binding force or a legal consequence, such as to serve as proof or testimony to anyone who needs such a proof.

In the broadest sense of the word, since the Dutch Registration Law in 1970, a "Deed (*akte*) is any piece of writing and document, which has "legal value" and can be used as proof acceptable to the public and admissible in Court. Any such piece of writing or document can be registered.

In the world of Notaries in Indonesia, however, most of the Deeds are in the narrow sense of the word, as mentioned above.

Moreover, Deeds should have a "recognizable format" to be easily identifiable as such, and according to Indonesian Law contain either an agreement (overeenkomst, perjanjian, persetujuan) or a contract.

An Agreement (overeenkomst, perjanjian) has in Indonesian modern private law rather broad meaning, it is a broad concept.

A contract is any "binding agreement". A non-binding agreement is only nominally an agreement, a simple statement, and not a contract.

There is also a distinction between unilateral agreements (eenzijdige overeenkomsten, perjanjian sepihak), such as a testament, a will, a fixed term of condition ("take it , or leave it") and bilateral or plurilateral agreements (tweezijdige en meerzijdige overeenkomsten, perjanjian dwi pihak atau multi pihak); and also another distinction between oral and written agreements.

In order to have a long-term effect, agreements should be written, preferably in the form of a Deed.

In English Law, a Deed is a written document that is signed, sealed, and delivered, and usually prepared by a Solicitor who has the authority to act as Notary Public. His main job is to attest or to certify deeds and other documents. His position is quite different from that of an Indonesian Notary which is basically of Dutch origin.

a. Private Deeds.

A Private Deed is a Deed established by and between private persons without the presence or mediation of a properly authorized public officer or a specifically competent public authority.

With the improvement in literacy of the people in Indonesia today, more and more statements and agreements between citizens are now made in the form of a Deed, usually a Private Deed, made on a stamped paper or just an ordinary paper and later on stamped with a 1000 (rupiah) seal, in stead of going to a Notary or any other public officer, just to save cost or to save time.

The making of a Private Deed, which concerns or contains an agreement or contract, and intended by the parties to have full legal binding force as proof before a Court of law, providing that no one of the parties way later on revoke or deny the existence or genuineness of it, is regulated by articles 1313, 1320, and 1338 of the Civil Code. The ultimate paragraph of article 1338 emphasizes the requirement "that it should take place with good intentions or good faith" , on all sides and on all parties.

But, what is meant by "private deed" in the broader sense of the term, as mentioned above, at present is not only the stamped or sealed private deed, but also, when necessary, all kinds of "house papers", like: family and other kinds of letters, postcards, bills, drawings, etceteras, which may have "legal value" as instruments of proof.

b. Validity of a Private Deed.

Any Private Deed made between citizens or members of the community is in general, legally binding, although the legal capacity to adopt any form of legal binding document by one of the parties may be doubtful, e.g. or regarded as "mentally not normal". But that is up to the

Court to decide upon "the shade or degree" of the legal validity of the deed, because it depends on many factors and circumstances.

At any rate, any private Deed is legally binding, but not necessarily authentic, i.e. it has no absolute power, anybody who has something to do with the use of it, has the right to doubt the rightfulness or propriety of the contents of the Deed and even the Deed itself, and the parties concerned have then to prove its genuineness to any incredulous third party.

That is one of the reasons that many persons who have made a Private Deed can later on come to a Notary to "register" the Deed. By this registration the Notary guarantee the date of this private deed only.

A Notary can also legalize a private deed , in the legalization process, all parties or their proxies, with power of attorney, should be present. The Notary has then to examine and to verify every legal aspect of the Private Deed, including the legal identity of the persons involved, and when the Notary is satisfied with or about the legality or the propriety of the Private Deed, he reads out this Private Deed to them, after which they put their signature, and the Notary can then enter the Deed into his "Legalization" of Private Deeds.

The registered and legalized Private Deeds are then provided with a registration/legalization number and seal "registration" or "legalization", by which the Notary guarantees its genuineness.

Some writers call this "legalization/registration" or "authentication" of the Deed, but many Jurists disagree, since it does not really authenticate but merely legalizes and registers the deed, whose substantive validity or invalidity remains intact.

c. The Official/Notarial Deed.

The Official/Notarial Deed when duly established is automatically and legally authentic, i.e. genuine and, as such, is absolutely accepted as true.

Anyone or any party who has doubts about its genuine or legal validity has to come with solid proofs to support his arguments. And it is then up to the Judge to decide.

But normally, no one will doubt the genuineness of an Indonesian Notarial Deed, as the Notary is under constant control or supervision of so many sides, including the general public.

In making his Deeds the Indonesian Notary has to follow as strictly and rigidly as possible all rules, principles, procedures, regulations, government policies, International Conventions, and relevant State Laws.

Although Indonesia has an "open system or freedom of contract", any contractual deed however, in form, format and content, should be made properly within the limits set by Law.

Any form or kind of violation of the rules, principles, regulations, and laws, can result in nullification of the Deed. The Indonesian Notary is therefore, in general, very cautious and conscious about it, in order to uphold his dignity and the trustworthiness of his professional integrity.

d. Validity of the Notarial Deed.

As stated earlier, the Notarial Deed, provided that it has been made correctly and properly, is automatically "authentic".

The main differences between a Private Deed and a Notarial Deed are as follows:

- a. Notarial authentic Deeds always have a "fixed" and certain date; executed before and read out by the public authority/Notary; done at the place where the Notary has an office and attested by at least two witnesses, while that is not the case with Private Deeds;
- b. The engrossment of an authentic Notarial Deed (Grosse akte), especially the deed of "Acknowledgment of indebtedness" which on the top of the deed contains the words "In the name of the almighty God" ("Demi Keadilan Berdasarkan Ketuhanan Yang Maha Esa") has executorial power. This kind of Notarial deeds accompanied by original deed of mortgage (akte hipotik/ sertipikat hipotik) made by a Conveyancer (PPAT/Pejabat Pembuat Akta Tanah), according to article 224 of the New Indonesia regulation, has the same executorial power as the judicial decision of a Court of Law.

Usually an Indonesian Notary not only functions as public officer/Notary, but also as Conveyancer, this Conveyancer is one of the public officers nominated by the government, (after passing the special Agrarian examination held by the Departement of Agrarian) he/she is the only one having the authority to execute all kinds of transactions concerning land. Hence Private Deeds concerning land transactions in Indonesia are not per se valid;

- c. Authentic Notaries Deeds can never go as tray in practice, while the availability or existence of Private Deeds cannot be guaranteed.

As far as the validity of the authentic Notarial Deed as absolute instrument of proof is concerned, the following can be said about its probative value.

A distinction should be made between three kinds of evidential values of authentic deeds :

1. The external evidential value (uitwendige bewijskracht).

This means that any authentic deed, according to article 1875 of the Civil Code, has sui generis absolute evidential value, a Private Deed only has evidential value when the parties concerned acknowledge in due form the truth or the existence of it, and not when challenged and rejected by one of the parties.

But the authentic Notarial Deed has a public character with immediately full evidential value, as the Latin maxim goes "acta publica probant se ipsa".

2. Formal evidential value (formele bewijskracht).

This formal evidential value of an authentic deed, according to the ruling legal theory in Indonesia, is derived from the logic that the duly and formally written statement of a public officer who is sworn-in like a Notary, about the true existence of a deed ought to be trusted. Otherwise, the theory says, the official Oath taken by the Notary becomes meaningless.

It is for this reason that candidate Notaries should be carefully selected and tested on their character, integrity, and family background.

In general, any official deed duly made by any duly sworn in public officer should be or ought to be trusted.

Nevertheless, article 263 of the Penal Code provides ways and means to prosecute any public officer for forgery or abuse of authority, if a forgery lawsuit claim before a private law court fails.

3. The material/substantial evidential value (materiele bewijskracht).

This theory of material evidential value of an authentic deed is derived from the logic that the main purpose of any duly made public deed is to state facts, to state the truth about the solemnly made statements or wishes of contending parties. That the Notary is not allowed to and should not add anything from his own opinion or ideas other than those approved by the parties concerned in full consciousness without any feelings of compulsion.

The material evidential value of authentic Notarial deeds is based on or derived from the provisions of articles 1870, 1871 and 1875 of the Civil Code.

CHAPTER V

FOREIGN INVESTMENT CORPORATION IN INDONESIA

A. The Role of Foreign Investment in Indonesia

No one today denies the importance of foreign investments, provided that, as a matter of course, the benefits and profits are equitably shared by the local people in the form of well-paid jobs and fair treatment by the foreign owners, and by the home country in the form of all kinds of taxes and contributions to the development of modern cultural, economic as well as geographical infrastructure.

The aspiration and expectations, however, are highly tempered by the fact that Indonesia has to compete with other Asian countries which are more attractive to investors in general, as capital today has a more and more international or global character, whether owned by Americans, West Europeans, Japanese or Taiwanese, or even Indonesians themselves.

The determining factors concerning attractiveness for investment differ from country to country, from time to time, and from group to group of capital owners. But the most general are: an effective and fair legal system, political stability, attractive monetary and banking system, adequate infrastructure, reasonable labor costs, and efficient transportation and telecommunication systems.

As Indonesia is in hard need for foreign investments, the Government is sparing no efforts to invite other countries short of sacrificing national pride and national interests, as the national character and nation building process remains to be completed. So most of the national leaders are concerned with an identity crisis if the negative effects of the flow of foreign capitals is not adequately under control. The main visible signs of an identity crisis are stress, frustration, rising criminality including corruption, prostitution, and the use of drugs.

With a population of 190 million, an annual growth rate of 1,7 %, a 35 % proportion of population less than 15 years of age, a GDP of \$US 150 billion, a per capita income of only \$US 770, an average annual real GDP growth of 6,9 %, 6 % unemployment rate and possibly higher, Indonesia has to try hard to induce foreign investments as far as possible and as harmoniously spread as possible throughout the 100 main islands of the archipelago, out of the total 13.000 big and small islands.

B. Foreign Investment Legislation in Indonesia

As discussed above, Indonesia is trying hard to attract foreign investments by changing and amending everything known to be a handicap to interested foreign investors and owners of capitals, meeting their demands and suggestions as far as possible, and by doing so trying to make the investment climate as attractive as possible.

The legal aspect of Indonesian foreign investment policy covers the following items :

- (1) legal basis;
- (2) corporate law;

- (3) taxation;
- (4) incentives;
- (5) special facilities;
- (6) land and building;
- (7) relevant international agreements.

(1) Legal Basis

The legal basis for foreign investment in Indonesia is still Law number 1 of 1967, amended by Law number 11 of 1970. These laws are designed to give effect to the various deregulatory policies and measures that have been adopted, time and again, by the Indonesian Government.

In addition to this investment law, all companies, including PMA (Foreign Direct Investment) Companies, are subject to sectional (departmental) industrial policies as required by the corresponding Ministries.

Reference should be made to the Indonesian government regulation on Shares in Foreign Investment Corporations number 20/1994 and the Decree of the Minister for Investment/Chairman of the Investment Coordinating Board number 15/SK/1994 concerning Share Ownership in Foreign Capital Investment Companies. The main aspects in this deregulation policies were :

- (a) Foreign partners could be in person/individual or corporation, this means that every foreign individual or corporation who has the intention and capital can immediately make investments in Indonesia.

- (b) Foreign partners can possess 100 % shares in all sectors which are open to Foreign Investors except those concerning public needs, such as :
1. Seaports;
 2. Production, transmission and distribution of electrical power for public use;
 3. Telecommunication;
 4. Sea Transportation;
 5. Air Services;
 6. Portable Water ;
 7. Railroads;
 8. Atomic Reactors;
 9. News;
- in which Foreign companies must form a Joint Venture with Indonesian partner, and at least 5 % of the corporation's share must be possessed by Indonesian partner in the initial phase;
- (c) The obligation of divestment is that foreign partner are requested to transfer parts of their shares to Indonesian partners after 15 years of production;
- (d) The minimum limit of investment capital is deleted, so this policy gives the opportunity for foreign investors (corporation or individual) to invest their capital in small scales, for example in component industry, etc;
- (e) A foreign company is allowed to set up a new company with 100 % of shares owned by it jointly with another foreign partner or Indonesian partner;

- (f) Foreign entities and or foreign individuals are allowed to buy Indonesian corporation's shares as long as their activities are still allowed for foreign investments;
- (g) The location of project is limited to industrial zones or bounded zones, but if the investor of this foreign investment can show proof of land possession, then the company can use this location as long as it is still in the industrial zones;
- (h) The duration of operation permit for foreign company is valid for 30 (thirty) years, since the company starts to operate and can be extended;
- (i) Based on the Deregulation Policy, June 1994, indirect export through sub-contract system can be considered as direct export. Any PMA Company is granted a period of 30 years to exist after its legal formation, and if it makes an additional investment (i.e. expansion of its project) within that period, then another 30 years of continued existence is granted for that expansion. Thus, in fact, a PMA company can keep growing and expanding and continuously prolongs its existence for an indefinite period of time.

(2) The Corporate Law.

Corporations were formerly regulated in Indonesia by the Commercial Code, chapter three, from articles 36 to 56.

On 14 February, 1995, a new Corporation Law was enacted replacing the chapter on Corporation Law of the Commercial Code. This new Law is far more extensive than the old provisions in the Commercial Code, and gives more security, more certainty and greater clarity about

many aspects of the modern corporations, including the public companies listed in several national and international stock exchanges.

Government policy on Shares in Foreign Investment Corporations is laid down in Regulation number 20/1994, and the Decree of the Minister for Investment/Chairman of the Investment Coordinating Board number 15/SK/1994 concerning Share Ownership in Foreign Capital Investment Companies.

A PMA Company is generally established as a joint venture undertaking between foreign and Indonesian partners, which has more opportunities to benefit from Indonesia than a pure PMA company with 100 % foreign ownership.

A joint venture PMA Company takes the form of a Limited Liability Company called " PT " (Perseroan Terbatas), which is subject to the Indonesian Corporate Laws.

A PMA Company in infrastructure projects, e.g. seaports, electricity generation and distribution for public use, telecommunications, shipping, airlines, portable water, public railways, atomic energy reactors and mass media, is established by way of joint venture between foreign and Indonesian partners whereby the Indonesian share should be at least 5%.

A PMA Company may be established with 100 % foreign ownership, provided that after 15 years of commercial operation, the company starts to be divested, where parts of its shares are sold to Indonesian individuals or legal entities, through direct placement and or indirect through domestic stock exchange.

(3) Taxation

The Income Tax in Indonesia is progressive, and this applies to both individuals and enterprises. The income tax rates are 15 % for annual incomes of up to 10 million rupiahs, 25 % for annual incomes between Rp 10 million and Rp 50 million, and 35 % for annual incomes above Rp 50 million. A self-assessment method is used to compute the tax.

A loss carried over for a period of 5 years is provided. For investments in 13 Provinces of East Indonesia, the loss can be carried forward up to 8 years.

Depreciation costs on assets are deductible from the Income Before Tax (IBT). Depreciable assets are grouped into four categories depending on the useful life of the assets.

Investors have the choice between the straight line method (for periods of less than 20 years) or the fast declining balance method (except for buildings).

The depreciation rates, determined according to the useful life and utilization, are as follows :

Useful Life	Rate
--- less than 4 years	50 % reducing balance
--- between 4 - 8 years	25 % reducing balance
--- exceeding 8 years	10 % reducing balance

For buildings the depreciation rate is 5 % using the straight line method.

10 % Value Added Tax (VAT) is applied to imports in normal cases, for manufactured goods and most services, but foreign investors may apply for attractive reductions for " own (project) use " items.

There is also a 10 % - 35 % sales Tax on luxury goods whenever applicable on purchase. Tourists and foreigners (without residential status) may be exempted from this tax.

Payments of dividends, interests, and technical and management fees for services performed in Indonesia to Indonesian and non-Indonesian residents are subject to withholding tax, as follows :

Payments to Indonesian residents in general	15 %
For technical and management services	9 %
Payments to non-Indonesian residents	20 %

(4) Incentive

All investment projects approved by the Investment Coordinating Board (BKPM), PMA as well as PMDN (domestic capital investment), including expanding PMA and PMDN Companies to produce similar products with an excess of 30 % of installed capacities or diversification of products, will be granted with the following incentives :

- (a) Exemption or relief from import duties and levies on
 - (i) capital goods (machinery, equipment, spare parts, auxiliary equipment) imported,
 - (ii) raw materials imported for the purpose of two years full production (accumulated production time);
- (b) Exemption from Transfer of Ownership Fee for Ship Registration Deed or Certificate made for the first time in Indonesia;
- (c) Deferred payment of Value Added Tax (PPN) and Sales Tax on "luxury goods " Ppn (Barang Mewah) arriving with imported Capital Goods directly related to the production process;

- (d) Postponed payment for up to 5 years, of PPN and Sales Tax on “ luxury goods “ arriving with Capital Goods imported by PMA or PMDN companies engaged in the field of hotel, office building, shopping center, and public transportation;

Special incentives are provided for Exporting Manufactures, e.g.

- (i) Restitution of import duty and import surcharge on imported goods and materials for the manufacturing of products for export.
- (ii) Exemption from VAT and Sales Tax on Luxury Goods and Material purchased domestically for the manufacturing of products for export.
- (iii) The import of any amount of raw materials needed for the manufacturing of Export Products.

(5) Special Facilities

Bonded Zones (Kawasan Berikat) and Export Processing Enterports (EPTE) are established to locate Industrial Companies for Export Products. These companies are exempted from the import duty, import surcharge, excise, income tax, PPN and Ppn (Barang Mewah), for imported capital goods and equipment. 25 % of their products may be sold to local markets after paying all due normal import duty, customs duties, etceteras. 5 % of raw material may be sold as “ scrap or waste “ to the local market.

The above mentioned exporting companies are also allowed to lease their own machinery and equipment to their subcontractors located outside the Bonded Zone or without EPTE Status, for a maximum of two

years in order to further process their own products beyond the bonded Zones.

They are also exempted from VAT and Sales Tax on “luxury goods” on the delivery of products for further processing from their own subcontractors outside the Bonded Zone and EPTE, or the other way around.

(6) Land and Building

As there are in Indonesia, according to Indonesian Agrarian Law number 5 of 1960, “freehold land rights”, a special way out is created to enable companies which need land, in the form of three types of rights attached to land for use by any Company in Indonesia, whether national or foreign.

The above mentioned rights on land are as follows :

(a) The Land Cultivation Right (HGU)

This HGU is the right to use a plot of state-owned land for purpose of agriculture, e.g. plantation, fishing ground, cattle farm and meadow.

By law, land title for cultivation is granted for a maximum period of 35 years, but may be extended to sixty years if the land is properly used and managed.

The title of the right to cultivate land is given only to Indonesian partners or to legal entities domiciled in Indonesia, including PMA Companies. With the approval of the government (corresponding Minister) it can be used as a collateral, or transferred to a third party;

(b) The Right of Building on Land (HGB)

HGB is the right to build or to construct, and to own the buildings, on a plot of land that a person has " purchased ". The title is granted for a maximum period of 30 years, which can be extended for another 20 years.

The HGB title can only be granted to Indonesian individuals, and or to legal entities domiciled in Indonesia, including PMA Companies. The HGB title can be used as collateral, or transferred to a third party. Government approval is not needed;

(c) The Right of User (Hak Pakai, HP) on Land

This right is the least extensive among the three. But it can be used for any legal purpose for a certain period of time, depending on the negotiations with the " owner " of the land, or with the government, if it is state-land (tanah negara, tanah daerah), usually a Local Government.

Foreign investors who obtained mining contract from the Minister of Mines and Energy, or forest exploitation rights from the Minister of Forestry, can automatically use the land within their " concession " boundaries for purposes directly related to their business license. If, however, investors want to use the land for different purposes, then special applications should be filed to the Ministry concerned. Such acquitted rights have no collateral value to the right-holder.

(7) Relevant International Agreements

- (a) Indonesia has concluded bilateral agreements with Denmark, Norway, Belgium, Switzerland, France, United Kingdom, Germany,

Taiwan, Republic of Korea, Italy, Vietnam, Finland, Tunisia, Hungary, The Netherlands, Luxembourg, Rumania, Poland, Australia, and the five other Asean countries, to guarantee investments made by the nationals of those countries.

The guarantee covers compensation in case of nationalization or expropriation, damages or losses caused by incidents of war, revolution or insurrection, and payments for any approved remittances pursuant to the investments in case of non-convertibility of the currency.

In order to create a favorable international investment climate, Indonesia has also signed multilateral agreements, thereby promoting foreign direct investments in Indonesia. Indonesia has ratified the Washington Conventions 1965, and has accepted the jurisdictions of ICSID arbitration and conciliation.

Within this "promotion" context Indonesia has become a member of the Multilateral Investment Guarantee Agency (MIGA) which will protect investments against various political risks;

(b) Intellectual Property Rights

Indonesia recognizes the importance of intellectual property rights to be protected.

Indonesian Law on Trade Marks, Copy Rights, and Patents is consistent with international standards;

(c) Double Taxation Avoidance Agreements

To avoid double taxation on certain incomes, e.g. profits, dividends, interests, fees, and royalties, Indonesia has signed agreements with 22 countries : United States, United Kingdom, Ger

many, The Netherlands, Belgium, Austria, Denmark, Norway, Sweden, Australia, New Zealand, Canada, Switzerland, Japan, South Korea, India, Bulgaria, and Asean countries.

Withholding tax rates applied to residents of these countries signing tax treaty with Indonesia, may be reduced on the based of the provisions of the particular tax treaty;

(d) Immigration Agreements

Tourists and business visitors from The Netherlands, Germany, France, Belgium, Britain, Luxembourg, Italy, Spain, Greece, Denmark, Sweden, Finland, USA, Canada, Australia, Norway, Iceland, Australia, Switzerland, New Zealand, Japan, Republic of Korea, Ireland, and the ASEAN countries, do not require visa for a maximum stay of two months. This visa is, however, not extendable.

Other kinds of visa are fairly easy to obtain if duly requested.

C. The Foreign Investment Affairs

(a) The Agency For Investment Affairs

The Investment Coordinating Board, headed by the Minister for Investment Affairs, is the central agency responsible for the formulation of the national policies and planning, promotion, licensing, control and evaluation. The investment approvals, and consecutively, the operational licenses, are issued by the BKPM. Its authority is based on delegations from 13 sectional Ministers responsible for the national administration of the respective sectors.

The investment approval includes the granting of incentives and facilities. Investment in this regard refers to any direct capital investment which is made within the framework of Law number 1 - 1967 on Foreign Capital Investment, and Law number 6 - 1968 on Domestic Capital Investment.

After the approval letter from the BKPM is obtained, regional permits must be requested to the Governor/Head of the Province through the BKPM, the Regional Investment Coordinating Board, namely :

- (i) Location permit;
 - (ii) Building permit;
 - (iii) Nuisance Act permit;
 - (iv) Working permit for expert employees;
 - (v) Land title (HGU and or HGB).
- (b) Application and Approval Procedures

To apply for a New Investment approval, foreign investment applicants have to complete and submit to BKPM two copies of an application form called : Form Model I/PMA, and one copy to the relevant BKPM.

For foreign investment projects to be located in Bonded Zones, investors should submit the application through the respective Bonded Zone Authority. There are several documents that should be attached to the Application Form, namely :

- (i) Power of attorney to sign/submit the Application;

- (ii) Articles of Association of both foreign and Indonesian companies. If the partners are individuals, a Citizen Identification Card is necessary;
- (iii) Tax Registration Code Number Identification Card (NPWP) for the Indonesian Company or Individual;
- (iv) Joint Venture Agreement (by notarial deed) and Technical Agreement (if applicable);
- (v) Description of the production process (flow chart, block diagram, etceteras);
- (vi) Description of business activities (of the services sector).

Failure to submit these documents completely could lead to delay in the granting of the BKPM Approval.

It is for BKPM to process, study and evaluate the above-mentioned documents in terms of suitability to sectoral policies, technology, market, and finance. Some discussions and negotiations are sometimes necessary.

After the evaluation process, BKPM shall submit a Recommendation Letter to the President to obtain the Presidential Approval. Based on this Presidential Approval, BKPM shall issue a Notification Letter of Presidential Approval (SPPP) to the foreign Investor, with copies to the related Ministers and Embassies.

Normally, the whole process will take 4 - 6 weeks.

D. The Joint Venture Agreement

The Joint Venture Agreement is the finished or final product of a series of discussions and negotiations between candidate Foreign and Indonesian Partners, and will become part of the Articles of Incorporation of the Joint Venture Company in a Notarial Deed. But

before that occurs, the Joint Venture Agreement is first drawn up in the form of a Notarial Deed for approval by the BKPM, and then used as a basis to establish the Joint Venture Company. There is no prescribed format, but normally the Joint Venture Agreement consists of :

- (1) Name of the planned Joint Venture Company PT;
- (2) Main Line of business, with relevant technical description;
- (3) Business Philosophy in brief;
- (4) Project Location;
- (5) Estimated Amount of Total Capital Investment in US Dollars;
- (6) Composition of Share Ownership;
- (7) Planned Composition of Directors, and Board of Supervisors.

CHAPTER VI

NOTARIAL DEED OF ESTABLISHMENT OF FOREIGN INVESTMENT CORPORATIONS

a. Indonesian Corporation Law

All foreign investment corporations should be constituted in the form of a PT or *Perseroan terbatas*, the Indonesian term for Limited Liability Company. There is in Indonesian law no distinction between a "BV" and "NV" as in Holland, or between a "GmbH" and a "AG" as in Germany. But with the enactment on 14 February, 1995, of a new Law on the new form of PT, there will be in the near future a "private PT" which cannot sell its shares to the public, and a "public PT" which can sell its shares or certificates to the public through the Stock Exchange.

Introductory remarks

A *perseroan Terbatas* (PT) or limited liability company is under Indonesian law (and in the new Law) a company with fixed capital divided into shares. These are held by persons (individuals and or legal entities/juristic persons) who are liable only to the extent of the value of their shares.

The provisions of the Commercial Code dealing with the limited liability do not contain that particular term. The Code uses the term "

Naamloze Vennootschap " (NV), i.e. " association without a name " derived from the French term " societe anonyme " (S.A.). But since the 1950 the designation PT (for *Perseroan Terbatas* = Limited Liability Company) is common, and now officially used by the new Law of February, 1995, consisting of 128 articles, which replaces the provisions of only 21 (twenty one) articles of the Commercial Code.

Incorporation

(1) Articles of Incorporation

The Articles of Incorporation establishing a PT must be drawn up according to article 7, paragraph 1, of the new Law, in an authentic notarial deed in the Indonesian national language. In the Commercial Code, this is provided in article 38. It is a mandatory legal requirement, and failure to do so renders the act of incorporation null and void.

The Articles of Incorporation contain all matters pertaining to the existence of the PT, e.g. the rights and duties of the shareholders, the name of the company, its purpose, its duration, the domicile, the amount of total capital, the amount of each share, the number of shares taken by founders, the composition of the board of directors (*Dewan Direksi*), and of the board of supervisors (*Dewan Komisaris*), etceteras. A " director " in Indonesian law has an " administration and management " function.

There is in Indonesian Legal System no distinction between deferent types of Articles of Incorporation (*Anggaran Dasar*), i.e. the document embodying the agreement between the partners (shareholders) with regard to the company, as in other legal systems, such as England.

In Indonesia the Articles of Incorporation and the Memorandum of Association are put together in one Notarial Deed to be sent to the Minister of Justice for scrutiny, and after due corrections and alternations are made, will be approved by a Ministerial Decree. This approval gives to the company the status of Incorporation.

(2) Name of the Company

The name of the company has to be carefully selected, as every PT name should be unique throughout Indonesia. Every Notary has to propose several alternative names to the Ministry of Justice for selection. Sometimes the Ministry rejects all the proposed names, and comes up with several alternative names to be chosen by the founders of the company through the Notary.

(3) Founders .

The number of founders or founding members of any PT is at least 2 (two). The founders have to appear preferably in person before the Notary. Only in special cases may a founder be represented by someone with a proper power of attorney.

(4) Approval by the Minister of Justice

Before a PT can start operating as a juristic person or legal entity, it must obtain formal approval from the Minister of Justice. The notarial deed containing the Articles of Incorporation is to be submitted to the Ministry of Justice as soon as possible and should be completed with every detail required by the Ministry officials concerned.

In case of a foreign investment corporation the Articles of Incorporation should be first submitted by the Notary concerned in "draft" form for correction, and after the informal approval, then the

notary deed can be presented officially, This is to avoid unnecessary delay, as foreign investment projects have the highest priority for processing.

The following conditions are to be met for approval :

- (i) no serious objection to the establishment of the corporation;
- (ii) no aspect against good morals, any religion, or public order;
- (iii) no provision in the Articles of Incorporation against existing Laws;
- (iv) at least 20 % of the authorized capital has been issued;
- (v) at least 10 % of the issued capital has been paid up;
- (vi) the period when the remaining stock will be issued has been fixed;
- (vii) other conditions according to government policies.

(5) Registration and Announcement

The founders of a PT have to register the complete Articles of Incorporation and the Approval of the Minister of Justice into a special Public Registry maintained for that purpose by the Local Court (*Pengadilan Negeri*). The documents are also to be published officially in the State Gazette.

(6) Liability of the Company prior to Registration and Publication in the Gazette

According to the view of many Indonesian lawyers at present, the PT starts having juristic personality status and limited liability after the official approval of the Minister of Justice, the Registration at the Local Court, and the Publication in the State Gazette.

Formerly, the view used to be that from the date of the official approval of the Minister of Justice onward, the PT was already vested with juristic personality status, and became automatically a limited liability company. But now, directors and shareholders have better to wait for the

State Gazette Publication before acting on behalf of the Company, to be safe and free from personal liability. The Registration at the Local Court takes but a few days, while the Publication in the state gazette may take at least a fortnight.

(7) Liability of Directors and Shareholders prior to Registration and Publication

Prior to Registration and Publication of the official Approval of the Minister of Justice, the Directors are jointly and severally responsible for their acts and liable to third parties. Even after the Registration and Publication they remain personally, jointly and severally, liable to third parties, except in case where their acts have been performed with prior written approval by one of the members of the Board of Supervisors, preferably by its Chairman or by the Chairman of the Board of Commissions.

Liabilities of the Shareholders depend on the provisions in the Articles of Incorporation, but in general Shareholders are not allowed to indulge themselves in business operational activities on behalf of the company without the cooperation of a Director.

The relationship between a Director and the PT is of a dual nature in the sense that he is at the same time Employee and Agent of the PT.

The respective competence, responsibilities, and liabilities of the two positions which by nature are essentially different are formulated in the relevant Articles of Incorporation in the clearest language possible.

b. Notarial Deed of Foreign Investment.

There are at least two documents that should be made concerning foreign investment in Indonesia, where the joint venture agreement usually made before a Notary, and it is compulsory by law, namely :

(1) The Joint Venture Agreement, between foreign and Indonesian partners, which contains primarily the Articles of Association of the joint venture company to be established is attached to the Investment Application submitted to the Investment Coordinating Board (BKPM).

The Notarial Deed concerning the Joint Venture Agreement contains all relevant details about the agreement reached between the foreign and Indonesian business partners :

- (a) that the parties agree to incorporate the company;
- (b) the name of the joint venture company to be proposed to the Minister of Justice;
- (c) legal domicile and objectives;
- (d) capital and shares;
- (e) the transfer of shares;
- (f) general meetings of shareholders;
- (g) management arrangements;
- (h) finance position;
- (i) technical assistance and sale of products;
- (j) time to file for the application for investment;
- (k) Effective date, duration, and termination;
- (l) Accounting;
- (m) net profits and dividends;
- (n) dissolution of the company, and the governing law.

The Joint Venture Agreement is the product of discussion and negotiation between the foreign and Indonesian parties. And it is sometimes advisable to consult the BKPM and the relevant Ministries whenever specific policy problems arise, before going to a Notary to draw up and execute the Joint Venture agreement deed.

The Notarial Deed is titled "JOINT VENTURE AGREEMENT".

(2) The Articles of Incorporation Deed

The document for the establishment of the joint venture company, to be submitted to the Ministry of Justice for Approval contains the Articles of Association which form the main part of the Articles of Incorporation.

Although the wording and formulation of the Articles of Association may be the same as those of the Articles of Incorporation, their functions are different.

The Articles of Association are intended exclusively for the joint business partners, and for public authorities who have the duty to ascertain the provisions in the Articles of Association in compliance with the provisions of the Foreign Investment Laws. The Articles of Association set out the rules by which the company will be administered.

The Articles of Incorporation, on the otherhand, are formulated for the Minister of Justice, who alone has the authority in Indonesia to incorporate, i.e. gives "juristic personality" status, to associations, organizations, and corporations which meet the legal requirements.

The Ministry of Justice will scrutiny the text, the sense, the formulation of every Article, make corrections, suggestions for alteration, etc. , before giving final Approval.

The Articles of Incorporation and the Official Approval of the Minister of Justice are to be registered at a special Registry of the Local Court Secretarial Office, and published in the State Gazette. Then the PT Joint Venture Company can start officially to operate as a Legal Entity.

The Notarial Deed for the Articles of Incorporation is titled "P.T.(followed by the name of the company)...."

The format of this deed is different from that of the Joint Venture Agreement which mainly contains the Articles of Association.

The Notarial Deed for the Articles of Incorporation of the joint venture PT must meet the requirements as provided for by Law no. 3 - 1860 and additional instructions from the Ministry of Justice.

The Articles of Incorporation must include the following items :

- (1) Name and Seat of the Company;
- (2) Duration of Establishment;
- (3) Purposes and Objectives;
- (4) Capital Composition or Structure;
- (5) Composition of Shares;
- (6) Issuance of Share Certificates;
- (7) Share Registration;
- (8) Management Set-up;
- (9) Duties and Powers of the Board of Directors;;
- (10) Meetings of the Board of Directors;
- (11) Duties and Powers of the Board of Commissioners;

- (12) Meetings of the Board of Commissioners;
- (13) Finance and Financial Year;
- (14) General Meeting of Shareholders;
- (15) Annual meeting of Shareholders;
- (16) Extraordinary General Meeting of Shareholders;
- (17) Place and Notice of a Meeting;
- (18) Chairmanship and Minutes of General Meeting of Shareholders;
- (19) Quorum, Voting Rights and Resolutions;
- (20) Profits and Losses;
- (21) Reserve Fund;
- (22) Alteration of the Articles of Association;
- (23) Dissolution and Liquidation;
- (24) Concluding Provisions.

It is apparent that the Articles of Incorporation in the Notarial Deed to be established are more detailed and complete than the Articles of Association in the Joint Venture Agreement.

c. Stock of Corporations Going Public

Corporations wishing to "go public" or to become a Public Company, i.e. licensed to sell their share certificates, bonds, promissory notes, and or other securities to the public, through the Jakarta Stock Exchange (BEJ/Bursa efek Jakarta), have to meet rather rigid requirements. To obtain this status, they have to apply to BAPEPAM (Stock Exchange Supervisory Board), of the Ministry of Finance, Republic of Indonesia.

The Public companies will then become and will be called "Emittant of Stocks", after they obtain the approval of the BAPEPAM, The Stock Exchange Supervisory Board of the Ministry of Finance.

To obtain the Approval of the BAPEPAM, public companies have to satisfy several requirements. Without this approval, they cannot enter and join, or list their stocks in the Jakarta Stock Exchange. The second stock exchange, and the Surabaya Stock Exchange (BES/Bursa efek Surabaya).

Four professional agents, and at least one Underwriter are involved in the process of application, before the BAPEPAM will give the Approval as Emittant. There must be recommendations from the following :

- (1) a Notary, registered to BAPEPAM;
- (2) a qualified accredited Legal Consultant;
- (3) an immaculate accredited Public Accountant;
- (4) a qualified Appraiser, accredited to BAPEPAM; and
- (5) an accredited Underwriter, or several Underwriters forming a syndicate, which will buy up or guarantee the stock to be emmitted.

The essence of the above-mentioned requirements is, in short, an assurance that "everything" of or about the business and financial condition of the public company to-be, should be "transparant" to the general public, i.e. information about the state of the business and financial matters shall be provided to the relevant authorities and parties anytime and immediately. This measure is to ensure safe and fair play as to attract investors from abroad. Up till now, the BEJ (Bursa Efek Jakarta) has a fairly good reputation among Asian stock markets. But it depends, of course,

on other economic factors, e.g. inflation rates, export surplus.

The Notary concerned should, for instance, declare that no shareholder is "affiliated" to any member of the Board of Directors. There shall be no "affiliation" or family relationship between Directors and members of the Board of Commissioners or Shareholder.

"Affiliation", according to article 1 of the Decree of the Minister of Finance number 1548/KMK.013/1990, is :

- a. any family relationship by marriage or descend, horizontally or vertically, to the second degree;
- b. relationship between a Party towards his employee, his Director or toward his Commissioner;
- c. relationship between a Company and the Party who is, directly or indirectly, in charge of the control, or is controlled by, or is under the Control of the Company concerned;
- d. relationship between a Company and its Major (Main) Shareholder.

The Indonesian Notary concerned, is further involved in the process, where Notarial Deeds are to be made for the Articles of Association of the Public Company, deeds of extra-ordinary share holders meeting; deeds for certain kinds of securities, e.g. bonds, shares, credit securities, rights, warrants, and moreover, where notarial Legalization of copies or photocopies of legal documents are required, and there are so many in Indonesia.

Once the public company is accredited to BAPEPAM, it can enter either BEJ (Jakarta Stock Exchange) and/or BES (Surabaya Stock Exchange) which is smaller. To list for both BEJ and BES in Indonesia is called *cross-listing*.

For listing stock at the BEJ, the public company should have paid up capital (equity) of > Rp. 7.5 billion, while at BES the minimum requirement is Rp. 1.5 billion. The minimal number of common stock to be listed at BEJ is one million shares, while at BES 300,000 shares.

Each of the two Stock Exchanges, BEJ and BES, are run by a PT, a Limited Liability Company, approved and supervised by BAPEPAM which is a government body.

The Chairman of BAPEPAM is directly accountable to the Minister of Finance. Both BEJ and BES are intended for big companies.

There is also a Parallel Stock Exchange for small and medium businesses, called the BPI, for *Bursa Paralel Indonesia*. As it is for small and medium businesses, the listing fee is very small, around US\$1000,- average. Nevertheless, the number of listing small and medium companies, is very small, and BPI runs the risk of incurring to make financial losses. That is one of the reasons, that BPI and BES are trying to merge like the Amsterdam Stock Exchange and the Amsterdam Parallel Stock Exchange, but in any developing country, business mergers are very delicate matters, for many non-economic reasons.

Aside from the Notary, the Legal Consultant, the Public Accountant, the Appraiser, and the Underwriters, the Investment funds, the Investment Consultants, the Investment Managers, the Stock Brokers, the Investment Banks, the Trust Agents, and Property Custodians, also play a very important role in the operations of the Stock Exchange. They are all under control or supervision of BAPEPAM.

The authority and functions of BAPEPAM, based on Presidential Decree number 53 - 1990, and Minister of Finance Decree number 1548/KMK.013/1990, are as follows :

- a. to provide the Minister of Finance with recommendations on the developments of the capital market;
- b. to provide the Minister of Finance with recommendations concerning licenses to Stock Exchanges, Security Clearing and Custodian Houses, and Investment Funds;
- c. to issue or to cancel business licenses or permits to individuals or approvals as :
 - (1) underwriter, stockbroker, investment manager, investment consultant, stockbroker agent, or underwriter agent, or
 - (2) Property Custodian, or Security Administration Bureau;
- d. to register, to cancel, or to discipline the activities of the Professions supporting the Stock Exchange;
- e. to issue rules and requirements concerning the Listing of Stock, and announcing its date of effect;
- f. to investigate and collect any information concerning the relationship between Securities and relevant parties;
- g. to brief and to provide guidance to all business license holders, individual permits, the licensing and registration of all professions relative to the Stock Exchange operations, public companies, and the issuers of stock;
- h. to stop any Issuer of Stock or their publication of advertisements and brochures whenever deemed necessary, and to announce to the public its reasons;

- i. to audit every office, accounting or records, held by Public Companies or Stock Issuer which are or have been listing to BAPEPAM or other relevant License Holder;
- j. to report or publish all results of any audit or investigation, and the measures that have been taken, concerning Public Companies and all License Holders;
- k. to freeze or cancel the registration or execution of securities transactions;
- l. to act as resort of appeal for parties which are sanctioned by the Stock Exchange or the Stock Clearing and Custodian House;
- m. to establish regulations on take-overs and mergers of stock from issuers of stocks who already have made a general offer, or form Public Companies;
- n. to establish accounting rules and principles for capital market affairs;
- o. to delegate relevant authority to other Parties when- and wherever necessary;
- p. within the framework of authority assigned to BAPEPAM, to establish rules and regulations to implement provisions of the Laws concerning the capital market; and
- q. to take all other measures necessary, with the approval of the Minister of Finance, to achieve the objectives of this Decree number 1548/KMK.013/1990.

It is obvious that the Ministry of Finance is undertaking a huge task to redevelop Stock Exchange in Indonesia.

Before the war, there were Stock Exchanges in Batavia (now Jakarta), Semarang, and Surabaya.

During the Japanese Military occupation (March 1942 - August 1945) all modern businesses were closed, and the stock exchanges were completely destroyed.

After the war and struggle for independence (1945 - January, 1950), an attempt was made to revive the stock exchanges through Law number 15 - 1952, but the business climate and the business legal system were not favorable. Moreover, too few Indonesian businessmen in that period were mentally, intellectually, and financially prepared for modern business activities and legal institutions. Political developments since 1955 until 1975, particularly the communist flirtation period 1963 - 1966, have reduce the redevelopment of any Stock Exchange, good Notarial Services, and the relevant private, economic and business law, virtually impossible.

CHAPTER VII

CONCLUSION

From the discussion throughout the preceding chapters, the following conclusions may be drawn.

1. Although "Notary" as a social, economic, and legal institution, is of European origin, implanted in Indonesia as early as 1620, it is at present, fully accepted by the Indonesian Society (culturally) and the Community at large (economically, and legally).

Even the reception process of the relevant modern private law, which is of French and Dutch origin, is now taking place relatively smoothly, due mainly to the fast modernization of the education system of the young generation through several kinds of programs since 1967, not to neglect, the influence of modern TV, cinema, and satellite telecommunication. After taking over (or imitating) modern lifestyles, and consequently modern patterns of behaviour, modern ways of thinking in money term, followed by the increase in the use of modern western languages, the general pattern of Culture is changing rapidly, and interestingly enough. Modern social, economic, and legal institutions, which were rejected and widely criticized during the 1959 - 1966 period, are now unintentionally

and unconsciously, revived at least since 1980. All those "western style" institutions have begun to live up again. Particularly the study of law has been revived, based on the study of the Civil Code, the Commercial Code, and the Law on Notaries, so basic for the Notarial Profession, this renaissance of legal education has drawn more and more Indonesian students since 1970.

2. The Notary, during the 19th century, was only significant for the Europeans, the European community, and the European government officials and civil servants. In the pre-war 20th century period until 1942, i.e. the invasion of the Japanese, the Notary became a very important figure in the Indonesian community in the big cities and towns. However, in that period until March 1942, almost all Notaries were Dutch.

During the Japanese occupation, their offices and the Indonesian staff were taken over by Indonesians with legal education and training. After the Japanese surrender in 1947, a 3 - 4 years course was set up to educate and train "candidate" notaries (consisting of : Part I : basic knowledge, Part II : advance theories, and Part III : apprenticeship and practical examination). The teachers were Dutch jurists in Notarial and Private Law.

3. By and large, the position and role of Indonesian Notaries are like those of their colleagues in continental Western Europe. The main difference in their function and daily operation may consist in the fact that they have to comply with Indonesian Private Law, which is, unlike Dutch Private Law, pluralistic in nature. Thus, the Indonesian Notary has to

work and operate with pluralistic private law, including Adat Law and Muslim Marital Property Law instead of pure European Civil Law, as for instance, Dutch Private and Notarial Law.

4. The Indonesian Notary at present has, by and large, a very varied assortment of duties, obligations, and functions, and is even involved in a variety of social happenings and or occasions (lottery, prize winning quiz, etc.), where people demand "honesty, reliability and fairness", amidst a community where the power game plays a role, neglecting the rules of law and ethics, and sometimes also morals.

5. The most important product of the Notary, however, is the Notarial Deed, which is by law, automatically an authentic legal document.

It seems that in Indonesia, the demand for authentic papers and documents is increasing rapidly along with economic progress and the increase in variety, quality and quantity of modern business activities and transactions.

6. In addition to the growing number of urban areas, the enactment of new Laws, e.g. the Banking Law, the Insurance Law, the Labor Law, the Corporation Law, the Pension Funds Law, etc. also entrance the need for more Notaries.

7. With a sharp increase in the number of foreign investments during the last decade, especially after ratification by the Indonesian government on November 2nd 1994, of the World Trade Organization (WTO), which

was set up by Marrakesh Decree on 12 - 14 April 1994 concerning GATT, the regulation of GATT in investment matters which was traditionally known as TRIMS (Trade Related Investment Measures) would soon enter into force. These international instruments give greater role for Indonesian Notaries in a more active scenario of international trade and investments.

In particular,

- a. WTO is expected to begin operation not later than July 1995;
- and
- b. GATT 1994 signatories must repeal all investment laws which are inconsistent with GATT 1994; for developing countries, this may be achieved as late as five years after the establishment of WTO.

Thus, in the year 2000, it is expected that more foreign investors will come to Indonesia and the Role of Indonesian Notaries in the making of Deeds will assume still greater significance, particularly as Notarial Deed have become part and parcel of the body of instruments of legal certainty in Indonesia society.

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

LAW NUMBER 1 OF 1967

Concerning
FOREIGN INVESTMENT

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering :

- a. that, throughout the territory of this country, as a blessing of God, potential economic resources are found abundantly which have not yet been transformed into real economic strength because of, among other things, a lack of capital, experience and technology.
- b. that the Pancasila is the spiritual basis for the development of the Indonesian economic system and should always be reflected in economic policy.
- c. that economic development requires transformation of potential economic resources into real economic strength through investment, utilization of technology, expansion of knowledge, improvement of skills, and increases in organizational and managerial ability;
- d. that efforts to overcome economic decline and further develop our economic potential should be based on the capabilities and capacities of the Indonesian people themselves;
- e. that nevertheless this principle of relying on our own capability and capacity should not lead to reluctance to make use of foreign capital, technology and skill, so long as these are truly devoted to serving the economic interests of the people without causing dependence on foreign countries;
- f. that foreign capital should be utilized to maximum advantage in order to accelerate the economic development of Indonesia, as well as utilized in other fields and sectors, where Indonesian capital for the time being is not yet being employed;
- g. that it is imperative to devise clear regulations in order to fill the need for capital for national development, as well as to avoid uncertainty on the part of foreign investors.

In observance of :

1. Article 5 section (1), article 20 section (1), article 27 section (2) and article 33 of Constitution.
2. The Decree of the Provisional People's Consultative Assembly of the Republic of Indonesia No. XXIII/MPRS/1966 concerning the reform of the basic policies on the Economy, Finance and Development.
3. Note 1 of the MPRS of 1966 concerning Foreign Policy based on the Pancasila.
4. Law No. 5 of 1960 concerning the Basics of Agrarian Regulation.
5. Law No. 37 Prp. of 1960 on Mining, and Law No. 44 Prp of 1960 on Oil and Natural Gas.
6. Law No. 32 of 1964 concerning Regulations on Foreign Exchange Transactions.

With the approval of the Gotong Royong People's Representative Council, has decided;

To enact :

THE LAW CONCERNING FOREIGN INVESTMENT

Article 1

Investment in this Law denotes only direct investment of foreign capital made in accordance with or based upon the provisions of this Law for the purpose of carrying on an enterprise in Indonesia, with the understanding that the owner of the capital directly bears the risk of the investment.

Article 2

Foreign Investment in this Law means :

- a. foreign exchange which does not form a part of the foreign exchange resources of Indonesia, and which with the approval of the Government is utilized for financing an enterprise in Indonesia.
- b. equipment for an enterprise, including rights to technological developments and materials imported into Indonesia, provided the said equipment is not financed from Indonesia foreign exchange resources.
- c. that part of the profits which in accordance with this Law is permitted to be transferred, but instead is utilized to finance an enterprise in Indonesia.

CHAPTER II LEGAL FORM, DOMICILE AND AREA OF AN ENTERPRISE

Article 3

- (1) An enterprise as intended by Article 2, which is operated wholly or for the greater part in Indonesia as a separate business unit, must be a legal entity organized under Indonesian Law and have its domicile in Indonesia.
- (2) The Government shall determine whether an enterprise is operated entirely or for the greater part in Indonesia as a separate business unit.

Article 4

The Government shall determine the operating area for foreign capital enterprise in Indonesia, in accordance with national and regional economic developments, the type of enterprise, the amount of capital to be invested and the desires of the capital owner.

CHAPTER III FIELDS OF ACTIVITY FOR FOREIGN INVESTMENT

Article 5.

- (1) The government shall determine the fields of activity open to foreign investment, according to an order of priority, and shall decide upon the

conditions to be met by the investor of foreign capital in each such field.

- (2) The order of priority shall be determined whenever the Government prepares medium and long-term development plans, taking into considerations developments in the economy and technology.

Article 6.

- (1) Fields of activity which are closed to foreign investment exercising full control are those of importance to the country and in which the lives of a great deal of people are involved, such as the following.
 - a. harbours;
 - b. production, transmission and distribution of electric power for the public.
 - c. shipping;
 - d. telecommunications;
 - e. aviation;
 - f. drinking water;
 - g. public railways;
 - h. development of atomic energy;
 - i. mass media.

- (2) Industries performing a vital function in national defence, among others, the production of arms, ammunition, explosives, and war equipment, are absolutely prohibited to foreign investment.

Article 7

In addition to those mentioned in Article 6 section (1), the Government may determine certain fields of activity in which foreign capital may no longer be invested.

Article 8.

- (1) Foreign investment in the field of mining shall be carried out in cooperation with the Government on the basis of a work-contract ("kontrak karya") or other form in accordance with prevailing regulations.
- (2) The system of cooperation on the basis of work contract or other form can be implemented in other fields of activity which will be determined by the Government.

CHAPTER IV MANPOWER

Article 9.

The owner of foreign capital has full authority to appoint the management of the enterprise in which his capital is invested.

Article 10

Foreign capital enterprise are required to meet fair needs for manpower with Indonesian nationals, except in cases mentioned in Article 11.

Article 11

Foreign capital enterprises are allowed to bring and employ foreign managerial and expert personnel in positions which cannot yet be filled by Indonesian nationals.

Article 12

Foreign capital enterprises are required to conduct and/or provide regular and systematic training and educational facilities in Indonesia and/or abroad for Indonesian nationals with the aim of gradually replacing foreign employees by Indonesian nationals.

Article 13

The Government shall supervise the execution of the provisions of Article 9, 10, 11 and 12.

CHAPTER V USE OF LAND

Article 14

To meet the requirements of foreign capital enterprise, land may be provided, with the right of construction, the right of exploitation, and the right of use in accordance with prevailing regulations.

CHAPTER VI CONCESSIONS ON TAXES AND OTHER LEVIES

Article 15

Foreign capital enterprises are granted the following concessions on taxes and other levies

a. Exemption from :

1. Company tax on profits during a specified period not exceeding five years from the moment the enterprise commences production.
2. Dividend tax on that part of accrued profits paid to shareholders, as long as these profits are earned during a period not exceeding five years from the moment the enterprise commences production.
3. Company tax on profits referred to in Article 19 subsection (a) which are reinvested in the enterprise in Indonesia, for a specified period not exceeding five years from the time of reinvestment.
4. Import duties at the time of entry into Indonesian of fixed assets such as machinery, tools or instruments needed for the operation of said enterprise.
5. Capital stamp duties on the issuance of capital originating from foreign investment.

b. Relief :

1. In the levy of company tax through a proportional rate of not more than 50% for a period not exceeding five years after expiration of the exemption period as intended by section (a) sub 1 above.
2. By off-setting losses suffered during the period of exemption intended by section (a) sub 1, against profits subject to tax following the period mentioned above.
3. By allowing accelerated depreciation of fixed assets.

Article 16

- (1). The concessions on taxes and other levies mentioned in Article 15 shall be granted after consideration of the priority on fields of activity as intended by Article 5.
- (2). Besides the concessions on taxes and other levies referred to in section (1) of this article, additional privileges may be granted by Government Regulations to any foreign capital enterprise which is extremely important for economic development.

Article 17

Execution of the provisions of Article 15 and 16 shall be stipulated by the Government.

CHAPTER VII

DURATION OF FOREIGN INVESTMENT, RIGHT OF TRANSFER AND REPATRIATION

Article 18

Every permit for investment of foreign capital shall specify the duration of its validity, which shall not exceed 30 (thirty) years.

Article 19

- (1) Foreign capital enterprise shall be granted the right of transfer in the original currency of the invested capital, at the prevailing exchange rate, for:
 - a. profits accruing to capital subtraction of taxes and other financial obligations in Indonesia;
 - b. costs related to the employment of foreign personnel working in Indonesia;
 - c. Other costs which shall be subsequently determined;
 - d. depreciation of fixed assets;
 - e. compensation in case of nationalization.
- (2) Transfer procedures shall be subsequently determined by the Government.

Article 20

Transfers constituting capital repatriation can not be permitted as long as the concessions concerning taxes and other levies as mentioned in Article 15 remain in effect. The implementation of this article shall be further regulated by the Government.

CHAPTER VIII

NATIONALIZATION AND COMPENSATION

Article 21

The government shall not undertake a total nationalization/revocation of ownership rights of foreign capital enterprises, nor take steps to restrict the rights of

control and/or management of the enterprises concerned, except when it shall be declared by Law that interest of the State requires such a step.

Article 22

- (1) In case of the measure referred to in Article 21, the Government has the obligation to provide compensation, the amount, type and method of payment of which shall have been agreed upon by both parties, in accordance with valid principles of international law.
- (2) If no agreement can be reached between the two parties with regard to the amount, type and method of payment for compensation, arbitration shall take place which shall be binding on both parties.
- (3) The Arbitration board shall consist of three persons, one appointed by the Government, one by the owner of the capital, and a third person as chairman selected jointly by the Government and the owner of the capital.

CHAPTER IX

COOPERATION BETWEEN FOREIGN AND NATIONAL CAPITAL

Article 23

- (1) In the fields of activity open to foreign capital, cooperation may be effected between foreign and national capital, with due consideration to the provisions of Article 3.
- (2) The government shall further determine the fields of activity, forms and national capital, utilizing foreign capital and expertise in the fields of export and the production of goods and services.

Article 24

Profits obtained by foreign enterprises resulting from cooperation between foreign capital and national capital as mentioned in Article 23, after subtraction of taxes and other obligations payable in Indonesia, are permitted to be transferred in the original currency of the foreign capital invested.

Article 25

The provisions of this law regarding tax concessions and guarantees regarding natinalization and compensation are also valid for foreign capital mentioned in Article 23.

CHAPTER X
OTHER RESPONSIBILITIES OF
THE FOREIGN INVESTOR

Article 26

Foreign capital enterprises are obligated to manage and control their enterprises in accordance with the principles of good business administration without harming the interests of the State.

Article 27

- (1). Enterprise mentioned in Article 3 of which the capital is entirely foreign, are obligated to provide opportunities for participation by national capital, following specified period and in proportions to be determined by the Government.
- (2). When participation as intended by section (1) of article is effected by selling pre-existent shares, the proceeds of such can be transferred in the original currency of the foreign capital concerned.

CHAPTER XI
OTHER PROVISIONS

Article 28

- (1). Provisions of this Law shall be implemented by coordination among the Government agencies concerned in order to ansure harmonization of Government policies regarding foreign capital.
- (2). Procedures for such coordination shall be subsequently by the Government.

Article 29

Provision of this Law shall apply to investment of foreign capital effected after this law has come into force, either in new enterprises or in already existing enterprises fox expansion and/or modernization.

CHAPTER XII
TRANSITIONAL PROVISION

Article 30

Matters not yet regulated in this Law shall be subsequently stipulated by the Government.

CHAPTER XIII
FINAL PROVISION

Article 31

This Law shall take effect on the day of its enactment. In order the every person may be informed promulgation of this Law is ordered through publication in the State Gazette of the Republik of Indonesia.

Enacted in Jakarta
on January 10, 1967

THE PRESIDENT OF THE
REPUBLIC OF INDONESIA

sgd

SUKARNO

Promulgated in Jakarta
on January 10, 1967

STATES SECRETARY OF THE
REPUBLIC OF INDONESIA

ELUCIDATION OF LAW NUMBER 1 OF 1967

concerning FOREIGN INVESTMENT

GENERAL ELUCIDATION :

For several years our economic situation has been marked by a continuous decline of the People's buying power in the conspicuously growing differences in living standards. Such a distressing situation not be allowed to continue and should therefore be immediately halted.

The provisional People's Consultative Assembly has decreed that among other national problems, the main priority should be given to improve the economy of the People and that the way of facing economic problems should be based on rational and realistic economic principles. Strictly adhering to this decree of the Provisional People's Consultative Assembly, steps must be taken immediately to improve the economic fate of the people.

Our economic problem is the problem of increasing the prosperity of the People by increasing the production of goods and services, and furthermore the problem of seeking a just distribution of goods and services resulting from such production achieved through investment, utilization of technology, increases in knowledge, improvement in skills, and upgrading organizational and managerial capabilities. In this respect, investment plays a very important role.

In halting the economic decline and in accomplishing economic development, the important principle which should be held to firmly is that all efforts should be based upon the capability and capacity of the Indonesia people themselves. Yet this principle must not give rise to reluctance to utilize the money and skills of foreigners as long as they are truly devoted to serving the economic interest without causing dependence on foreign countries. Based on this rational and realistic starting point as set forth above, this law concerning Foreign Investment has been enacted. To achieve the aforementioned purpose, this Law grants exemption/concessions on taxes and other

facilities to foreign capital. Nevertheless, this law does not open up all fields of business to foreign capital.

Domination of foreign capital as known during the colonial period must automatically be avoided. vital enterprises which control the life of the people remain closed to foreign capital (see Article 6).

In each permit for foreign investment, a period of validity is fixed which cannot exceed 30 years. Besides, in determining which fields of activity foreign capital will be allowed, the Government shall fully observe the existing development plans which will be prepared by the Government (Article 5).

In this matter one may not forget that land, natural resources and the sincerity of the Indonesia State and nation can also be calculated as valuable capital.

The investment of foreign according to this law may be carried out in the form of enterprises in which one hundred percent of the capital initially consist of cooperation between foreign capital and national capital.

With regard to the provisions of Article 27, the Government will also determine which fields of activity may be undertaken only through cooperation with national capital (Article 5 section 1).

ELUCIDATION ARTICLE BY ARTICLE

Article 1

Differing from the credit whereby the borrower bears the risks of utilization, in foreign investment the investor bears that risk. This Law only regulate credit matters. In that connection it is necessary to point out the possibility of foreign capital alone being employed in one enterprise or alternatively of foreign capital alone being employed in an enterprise in cooperation with national capital.

Article 2.

Foreign capital in this Law shall not only take the form on foreign currency, but also shall consist of fixed assets needed to operate an enterprise in Indonesia, inventions owned by foreign person/bodies used in the enterprise in Indonesia and profit which may be transferred to foreign countries but is reutilized in Indonesia instead.

Article 3

Investment of capital by a foreigner in his status as an individual may create difficulties in the field of International Law. By requiring that the enterprise be a legal entity, there will be certainty with respect to legal status be an Indonesian legal entity subject to Indonesian Law. As a legal entity, there will be certainty with respect to the capital invested in Indonesia.

Article 4

Through this provision, equitable development can be strived for throughout Indonesia territory paying attention to deprived regions, in conformity with the regional and national and national economic development plans.

Article 5

Sufficiently clear.

Article 6

Sufficiently clear

Article 7

Sufficiently clear

Article 8

In order to accelerate the execution of economic development, the Government shall determine which forms of cooperation between foreign capital and national capital will be most beneficial for each field of activity. Such cooperation may take the form of work-contracts, joint ventures, or other such forms.

Article 9

The owner of foreign capital is fully allowed to determine the management of his enterprise. This is only proper since the capital investor will want to assign the management of the enterprise to persons trusted by him.

In the case of cooperation between foreign capital in national capital, the management shall be jointly determined.

Article 10

Sufficiently clear

Article 11

Besides providing training in technical fields a foreign capital enterprise is obliged to conduct and/or provide facilities for training and education in the field of marketing at home and abroad.

Article 12

Supervision by the Government shall be actively and effectively executed.

Article 14

(1) The provision of this article, which enables grants of land to foreign capital enterprises not only with the right of use, but also with the right of construction and the right of exploitation, constitutes the confirmation of the stipulation in Article 55 paragraph (2) of the Law on the Basics of Agrarian Affairs, in conjunction with Articles 10, 62 and 64 of the Decree of the Provisional People's Consultative Assembly No. XXIII/MPRS/1966.

(2). In line with the provisions of Law on the Basics of Agrarian Affairs, Article 35, Article 39 and Article 41, the right of construction can be granted for a period of at most 30 years which, in the view of the condition of the enterprise and its building, can be extended for at most 20 years.

The right of exploitation can be granted for a period of 25 years. For enterprise which, due to the kinds of

crops being planted require a longer time, the right of exploitation by prolonging the right by at most 25 years.

Article 15

a. Exemption.

1. Since the activities of an enterprise may be varied and thus the possibility of production is also varied, the period of tax exemption can be governed accordingly. The maximum period of 5 years is regarded as sufficient to give compensation for the expenditures made before the operation concerned commences production.

According to international criteria, the moment of starting production is the moment when the new operation commences producing a quantity of goods which can be distributed in the market.

2. Distribution of profits earned during the tax exemption period are also appropriately exempted from dividend tax.
3. Reinvested profits is treated as new foreign investment.
4. Sufficiently clear.
5. In the frame of granting tax exemption to foreign capital such levies as sub (a) no.5 shall not be a cost before a new operation commence production.

b. Relief.

1. Deviating from marginal company tax amounting to sixty percent of the net profit as stipulated by the 1925. Company Tax Ordinance, for a period of time not more than five years after the period of exemption, a lower tax rate shall be imposed with a observance to the fields of activity as intended by Article 5 section (1).
The amount of tax within said period of time shall constitute a proportional rate of at most fifty percent of the annual net profit.

2. Article 7 of the 1925 Company Tax Ordinance Stipulates then five years after the period of exemption, a lower with the profit of the following two years. According to the provision stated in number 2 sub b the loss suffered during the period of tax exemption may be calculated with profits earned after the period of tax exemption, so that the said loss may be fully covered.

3. The minister of Finance shall stipulate a table of depreciation for the fixed assets of the new foreign capital enterprise with observance to the fields of activity according to the order of priority intended by Article 5 section (1).

Article 16

- (1). The amount of concessions on taxes and other levies referred to in Article 15 shall be stipulated in conformity with the priorities in field of activity as intended by Article 5 and in accordance with the type of the operation.
- (2). There is a possibility that a foreign capital enterprise urgently needed for Indonesia economic growth can prove that the concessions on taxes and other levies as referred to in section (1) are still not sufficient to perform the operation efficiently and effectivelly. Such a case occur if the said enterprise requires a very large capital for investment or for overhead costs. In such a situation, the Government may grant other concessions to each enterprise deemed to be so deserving. Should the Government issue a Government Regulation as intended by Article 16, section (2), the Government shall contact Parliament.

Provisions concerning concessions on taxes and other levies as referred to in Chapter VI of this Law shall also be applied to national capital fields of activity.

Article 17

The Government will henceforth issue further regulations governing the administration of tax policies.

Article 18

Furthermore the following provisions are stipulated :

1. Foreign capital enterprises should keep separate books for their foreign capital.
2. In Stipulating the amount of foreign capital, the total shall be reduced by the amount which by means of repatriation has been transferred.
3. Every year the enterprise is obligated to submit a report to the Government on its foreign capital position.

Article 19 & 20

Foreign capital enterprise shall be granted permission to transfer in the original foreign currency after having operated for a period of time as stipulated by the Government. The right of transfer constitutes an incentive to attract foreign investment. All transfer, except those which are permitted based on Article 19, letters a, b and c, shall regarded as repatriation of foreign capital. It is felt to be just that enterprise employing foreign capital shall not be allowed to repatriate their capital to the extent that it involves a transfer of the depreciation of their capital as long as those enterprises are still enjoying concessions on taxes and other levies. It is necessary to explain that transfer of profits from foreign capital may also be executed during the time that those enterprises are still enjoying tax concessions and other levies.

Article 21 & 22

To guarantee a reassuring climate for the operation of foreign capital invested in Indonesian, in this article it is stipulated that the Government shall not nationalize foreign capital enterprises, except if it be necessary in the interest of the State. Such a measure may only be carried out by Law and by giving compensation according to the principles of International Law.

Article 23

The concept of national capital in this Law covers capital of the Central and Regional Government, Cooperatives and national private capital.

Article 24 & 25

Sufficiently clear

Article 26

The provision is intended to prevent foreign capital enterprises from carrying out activities which harm the interest of the State or to prevent them from not taking all measures necessary to manage their operation effectively and efficiently in line with the objective of granting opportunities to invest foreign capital in Indonesia.

Article 27

Sufficiently clear

Article 28

The execution of this Law involves the domains of several Departments. For that reason it is necessary to have a simple coordination body which may take the form of a council consisting of the Ministers concerned.

Articles 29,30 & 31

Sufficiently clear.

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

LAW NUMBER 11 OF 1970

Concerning

AMENDMENT AND SUPPLEMENT TO LAW NUMBER 1 OF 1967
CONCERNING FOREIGN INVESTMENT

WITH THE BLESSING OF GOD ALMAIGHTY,
THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering :

- a. that the overall fiscal policy of the State in addressing itself to development, comprises : the increase of Government savings through increase in revenue, encouragement of saving by the public, stimulation of investment and production as well as assistance in the redistribution of income towards more balanced and simplified administration.
- b. that in order to accelerate development in Indonesia it is deemed necessary to create a favorable fiscal climate for entrepreneurs, especially for investor.
- c. that in connection with the amendments made in the 1925 Company Tax Ordinance, it is necessary to bring Law No. 1 of 1967 concerning Foreign Investment into line with those amendments.

In observance of :

1. Article 5 section (1), Article 20 section (1) and Article 23 section (2) of the 1945 Constitution;
2. The Decision of the Provisional People's Consultative Assembly No. XX/MPRS/1966;
3. Law No. 1 of 1967 Concerning Foreign Investment.
4. The 1925 Company Tax Ordinance as amended and supplemented most recently by Law No. 8 of 1970 (State Gazette 1970/No. 43).

With the approval of the Gotong Royong Peoples Representative Council.

HAS DECIDED :

To enact :

A law concerning AMENDMENT AND SUPPLEMENT OF LAW NO. 1 OF 1967 CONCERNING FOREIGN INVESTMENT.

Article 1

Law No. 1 of 1967 concerning Foreign Investment shall be amended and supplemented as follows;

1. Article 15 shall be amended in its entirety to read as follows : Foreign capital enterprises which are operating in the field of activities intended by Article 5 shall be granted tax concessions as follows :

CAPITAL STAMP DUTY

firstly,

Exemption from capital stamp duty on the issuance of capital originating from foreign investment.

IMPORT DUTIES AND SALES TAX

secondly,

Exemption or relief from import duties and exemption from sales tax (on import) at the time of entry into Indonesia of fixed assets, such as machinery, tools or instruments needed for the operation of the enterprise.

TRANSFER DUTIES

thirdly

Exemption from transfer duties on deeds of ship registration is effected for the first time in Indonesia within a period of up to 2 (two) years from the moment of commencement of production with due regard to the nature of the enterprise.

COMPANY TAX

fourthly,

Concessions in the field of company tax :

- a. Compensation for losses as governed by Article 7 section (1) of the 1925 company Tax Ordinance.
- b. Compensation for losses suffered during the first 6 (six) years from the time of establishment as governed by Article 7 section (2) of the 1925 Company Tax Ordinance.
- c. Acceleration of depreciation to be further regulated pursuant to Article 4 section (4) of the 1925 Company Tax Ordinance.
- d. Incentives for investment as governed by Article 4b of the 1925 Company Tax Ordinance.

DIVIDEND TAX

fifthly,

- a. Exemption from dividend tax for a period of 2 (two) years, counted from the moment of commencement of production, on the portion of profit paid out to shareholders provided the said dividend is exempt from profit or income tax in the country of the recipients.
 - b. The said 2 years period may be extended with an additional tax holiday as governed by Article 16 section (2).
- II. Article 16 shall be amended in its entirety to read as follows :

1. The Minister of Finance is authorized to grant new entities, which invest their capital in fields of production which obtain priority from the Government, an exemption from company tax for a period of 2 (two) years (tax holiday) counted from the moment the enterprise commences production.
2. The Minister of Finance may extend the period of the tax holiday intended by section (1) of this Article provided the following conditions are met :
 - a. Should the said investment be able significantly to increase and conserve the State's foreign exchange, an additional tax holiday of 1 (one) year shall be granted;
 - b. Should the said investment be made outside Java, an additional tax holiday of 1 (one) year shall be granted;
 - c. Should the said investment require large amounts of capital, due to the need to develop infrastructure and/or because the project faces greater than ordinary risk, an additional tax holiday of 1 (one) year shall be granted,
 - d. In cases which are given special priority by the Government, an additional tax holiday of 1 (one) year shall be granted.

In addition to the tax concessions mentioned in Article 15 and in section (1) and section (2) of this article, a foreign capital enterprise which is very much needed for economic growth may be granted other additional concessions by Government Regulation.

- III Article 17 shall be amended in its entirety to read as follows :

The Implementation of stipulation in Article 15 and Article 16 section (1) and section (2) shall be determined by the Minister of Finance.

Article 2

- (1) *The old provisions can be applied fully, upon request of the party concerned, to application for investment which are pending a decision by the Investment Committee.*
- (2) *Investments having already obtained tax facilities according to Article 16 section (2) may be entirely reviewed in accordance with the new stipulations. should a request to the effect be field by the company concerned.*

Article 3

This Law shall take effect on the day it is promulgated. In order that every person may be informed, promulgation of this Law is ordered to be published in the State Gazette of the Republic of Indonesia.

*Enacted in Jakarta
on August 7th, 1970*
THE PRESIDENT OF THE
REPUBLIC OF INDONESIA

sgd.

SOEHARTO
Army General

*Promulgated in Jakarta,
on August 7th, 1970*
STATE SECRETARY OF THE
REPUBLIC OF INDONESIA

sgd

ALAMSYAH
Army Major General

Published in the State Gazette 1970 No. 46

ELUCIDATION OF LAW NUMBER 11 OF 1970

concerning

AMENDMENT AND SUPPLEMENT TO LAW NO. 1 OF 1967
CONCERNING FOREIGN INVESTMENT

GENERAL

In the context of utilizing the potentials of capital, technology and skill available in foreign countries to serve national economic development, Law No. 1 of 1967 concerning Foreign Investment was enacted.

This Law in addition to containing general provisions and regulation on investment of foreign capital, also contains provision concerning tax exemption and concession and other facilities to attract foreign investors.

In connection with the amendments made in the 1925 Company Tax Ordinance to bring it more into line with the broad outlines of the state policy on taxation in addressing itself to development, it is necessary that the provisions concerning tax exemptions and concessions governed by the Foreign Investment Law be made uniform and brought into conformity with the new provisions of the 1925 Company Tax Ordinance.

ARTICLE BY ARTICLE

Article 1

- I. *The new Article 15 governs tax concessions granted to foreign capital enterprises which operate in fields of activities by Article 5.*

Firstly,

Exemption from capital stamp duty on issuance of capital, previously governed by Article 15, letter a number 5 (old).

Sufficiently clear.

Secondly,

Exemption or relief from import duties and exemption from sales tax (on import) previously governed by Article 15 Letter a number 4 (old) sufficiently clear.

Thirdly,

This exemption is an expansion of the exemption in accordance with Article 8 of the 1924 Transfer Duties Ordinance, i.e., for ships which are to be registered in Indonesia for the first time. Ships which have been deployed/registered in Indonesia are ineligible for this exemption, even though for the investor concerned this may constitute registration for first time. The above exemption is only granted when the registration is effected within a period up to 2 (two) years after the moment of commencement of production. According to the prevailing definition, the moment of commencement of production means the moment a new enterprise starts producing goods which are distributed in the market. The 'las sentence "with due regard to the nature of the enterprise" means that the exemption is only granted for ships required and employed in its field of activity.

Fourthly,

Concessions in the field of Company Tax :

- a. *Compensation for losses which was not clearly regulated by Law No. 1 of 1967 is now governed by Article 15 section (1) 3rd, letter a and the execution there of is in conformity with Article 7 section (1) of the 1925 Company Tax Ordinance i.e. losses of any year can be carried forward for the 4 (four) successive years.*
- b. *Compensation for losses during the first year after its establishment which was previously governed by Article 15 letter b number 2 (old) is now governed by Article 15 section (1) 3rd letter b and the execution there of is in*

conformity with Article 7 section (2) of the 1925 Company Tax Ordinance. The aforementioned losses, customarily referred to as initial losses, can be carried forward in successive years until exhausted.

- c. Depreciation is accelerated for expenditures for investments in conformity with the government Program as intended by Article 4 section (4) of the 1925 Company Tax Ordinance, the execution of which of the Minister of Finance.
- d. Incentive for investment as governed by Article 4b of the 1925 Company Tax Ordinance, are also applicable to foreign enterprises.

Fifthly,

Exemption from dividend tax previously governed by Article 15 letter a number 2 (old).

Sufficiently clear.

These provisions concerning tax concessions Article 15 were previously governed by Article 16 section 1 (OLD).

- II. The new Article 16 governs the tax exemption period (tax holiday) which was previously governed by Article 15 letter a number 1 instruction of the Cabinet Presidium No. 06/IK/IN/II/1967 dated January 27, 1967.

This article consists of further stipulation under Article 1a section 1 (new) of the 1925 Company Tax Ordinance.

Section (1): Since the provision of a tax exemption period (tax holiday) is granted only to facility, it is granted only to new (newly

established) entities which have invested their capital in field of production which have obtained priority from the Government, which fact will be set forth in a decision of the Minister of Finance.

Section(2): In order more effectively to guide foreign investment towards targets desired by the Government, the 2 (two) years tax holiday intended by section (2) may be extended in cases as intended by letters, a, b, c, and d.

The extension of time intended by letter d will be reserved for a foreign capital enterprise which invests its capital in a certain location or in a type of activity determined by the Government.

Section (3): Previously governed by Article 16 section 2 (old).

Article 2

- (1) Sufficiently clear.
- (2) This provision is intended for investments approved on the basis of instruction of the President Number 18 of 1968 (mining enterprises)

Article 3

Sufficiently clear.

SUPPLEMENT TO THE STATE GAZETTE
OF THE REPUBLIC OF INDONESIA
NUMBER 2943

DECREE OF THE PRESIDENT OF THE REPUBLIC OF INDONESIA
NUMBER 97 OF 1993

CONCERNING
THE PROCEDURE FOR INVESTMENT

THE PRESIDENT OF THE REPUBLIC INDONESIA,

Considering :

With a view to further smoothening the implementation of capital investments, it is deemed necessary to amend Presidential Decree No. 33/1992 on the procedure for capital investments.

In view of :

1. Article 4 paragraph (1) of the Constitution of 1945;
2. The Nuisance Act. State Gazette of 1923 No. 226 as already amended and improved the latest by State Gazette of 1940 No. 450;
3. Law No. 5/1960 on basic agrarian principles (State Gazette of 1960 No. 1, Supplement to State Gazette No. 2043);
4. Law No. 1/1867 on foreign capital investment (State Gazette of 1967 No. 1 Supplement to State Gazette No. 2818) as already amended by Law No. 11/1970 (State Gazette of 1970 No. 46, Supplement to State Gazette No. 2943);
5. Law No. 5/1967 on basic forestry provisions (State Gazette of 1967 No. 8, Supplement to State Gazette No. 2823);
6. Law No. 11/1967 on basic mining provisions (State Gazette of 1967 No. 22, Supplement to State Gazette No. 2381);
7. Law No. 6/1968 on domestic capital investments (State Gazette of 1968 No. 33, Supplement to State Gazette No. 2853) as already amended by Law No. 12/1970 (State Gazette of 1970 No. 47, Supplement to State Gazette No. 2944);
8. Law No. 5/1974 on the principles of administration in regions (State Gazette of 1974 No. 38, Supplement to State Gazette No. 3037);
9. Law No. 4/1982 on the principles of environmental management (State Gazette of 1982 No. 12, Supplement to State Gazette No. 3215);
10. Law No. 5/1984 on industries (State Gazette of 1984 No. 22, Supplement to State Gazette No. 3274);
11. Law No. 24/1992 on spatial layout (State Gazette of 1992 No. 115, Supplement to State Gazette No. 3501);
12. Government Regulation No. 22/1986 on bonded zones (State Gazette of 1986 No. 30, supplement to State Gazette No. 3334) as already amended by Government Regulation No. 14/1990 (State Gazette of 1990 No. 13, Supplement to State Gazette No. 3407);
13. Government Regulation No. 6/1988 on the coordination of activities of vertical agencies in regions (State Gazette of 1988 No. 10, Supplement to State Gazette No. 3373);
14. Government Regulation No. 51/1993 on the analysis of impacts on the environment (State Gazette of 1993 No. 84, Supplement to State Gazette No. 3538);
15. Presidential Decree No. 26/1980 on the Regional Investment Coordinating Board;
16. Presidential Decree No. 33/1981 on the Investment Coordinating Board as already amended by Presidential Decree No. 78/1982.
17. Presidential Decree No. 26/1988 on the National Land Agency;
18. Presidential Decree No. 53/1989 on industrial estates;
19. Presidential Decree No. 25/1991 on the status, task, function and organisational composition of the Investment Coordinating Board;
20. Presidential Decree No. 34/1992 on the utilisation of

land, land titles for business operations and land titles for building construction by joint ventures under foreign capital investments.

DECIDES :

By revoking Presidential Decree No. 33/1992 on the procedure for capital investments;

To stipulate :

**THE PRESIDENTIAL DECREE CONCERNING
THE PROCEDURE FOR CAPITAL
INVESTMENTS.**

**CHAPTER I
PROCEDURE FOR CAPITAL INVESTMENTS**

Part One

Domestic Capital Investments (PMDN)

Article 1.

- (1) Prospective investors interested in undertaking business operations within the framework of Law No. 6/1968 as already amended by Law No. 12/1970 shall first study the Negative List for Capital Investments and contact the Investments Coordinating Board (BKPM) or the Regional Investment Coordinating Board (BKMPD) if further explanations are needed.
- (2) After making a sufficient study of the business fields open to investments and other relevant provisions, prospective investors shall file capital investment applications to the State Minister for Mobilisations of Investment Fund (Meninves)/Chairman of BKPM according to the application procedure laid down by Meninves/Chairman of BKPM.
- (3) If the applications are already in conformity with the domestic capital investment laws and requirements in force, Meninves/Chairman of BKPM shall issue letters of approval of capital investments, which are also effective as principle approval.
- (4) In order to smoothen the process of capital investments,

Meninves/Chairman of BKPM shall deliver copies of capital investment approval letters to relevant government agencies.

- (5) After investors have obtained capital investment approval letters and fulfilled relevant requirements :
 - a. Meninves/Chairman of BKPM shall issue :
 - 1) the limited importer's identification number;
 - 2) the decision on the granting of facilities/relief of import duty and other import levies;
 - 3) the approval of plans for the use of expatriates (RPTKA) needed as the basis for the Chairman of BKPM to issue the working licence for expatriates;
 - 4) the fixed business licence, on behalf of the Minister concerned with the relevant business pursuant to the delegation of authority.
 - b. The Head of the Regency/Municipal Land Affairs Office shall issue the location licence in line with the Spatial Layout Plan;
 - c. The Head of the Regency/Municipal Land Affairs Office shall issue land titles for building construction, for business operations and for management pursuant to the provisions in force;
 - d. The Head of the Public Works Service of the second level region or the Technical Working Unit on behalf of the relevant Regent/Mayor or the Head of the Urban Development Control Service (P2K) for the Jakarta Special Region on behalf of the Governor of Jakarta, shall issue the building construction licence (IMB);
 - e. The Secretary of the second level region on behalf of the relevant Regent/Mayor or the Head of the Bureau of Public Order on behalf of the Governor of Jakarta shall issue the Nuisance Act licence.
- (6) The obligation to possess the Nuisance Act licence shall not apply to industrial companies of the types for which the possession of ANDAL (analysis of impacts

- on the environment) is compulsory or companies located in industrial estates/bonded zones.
- (7) After obtaining capital investment approval letters from Meninves/Chairman of BKPM, investors within a specified period shall submit to BKPM master lists of capital goods as well as basic materials and complementary materials to be imported.
 - (8) Based on evaluation of the master lists as meant in paragraph (7), Meninves/Chairman of BKPM shall issue decisions on facilities/relief of import duty and other import levies.
 - (9) Applications for amendments of plans for capital investments already approved by Meninves/Chairman of BKPM, including amendments of project expansion, shall be filed by investors to Meninves/Chairman of BKPM for approval according to the procedure laid down by Meninves/Chairman of BKPM.
- (4) Presidential approval/rejection of certain capital investment applications shall be conveyed to Meninves/Chairman of BKPM.
 - (5) In the case of applications being approved by the President, Meninves/Chairman of BKPM shall notify the presidential approval as meant in paragraph (4) to prospective investors, which is also effective as principle approval.
 - (6) In order to smoothen the process of capital investments, Meninves/Chairman of BKPM shall deliver copies of notifications of presidential approval to relevant government agencies.
 - (7) After investors have obtained presidential decrees in the form of capital investment approval and fulfilled relevant requirements :
 - a. Meninves/Chairman of BKPM shall issue :
 - 1) the limited importer's identification number;
 - 2) the decision on the granting of facilities/relief of import duty and other import levies;
 - 3) the approval of plans for the use of expatriates (RPTKA) needed as the basic for the Chairman of BKPM to issue the working licence for expatriates;
 - 4) the fixed business licence, on behalf of the Minister concerned with the relevant business pursuant to the delegation of authority.
 - b. The Head of the Regency/Municipal Land Affairs Office shall issue the location licence in line with the Spatial Layout Plan;
 - c. The Head of the Regency/Municipal Land Affairs Office shall issue land titles for building construction and for business operations pursuant to the provisions in force;
 - d. The Head of the Public Works Service of the second level region or the Technical Working Unit on behalf of the relevant Regent/Mayor or the Head of the Urban Development Control

Part Two

Foreign Capital Investments (PMA)

Article 2

- (1) Prospective investors interested in undertaking business operations within the framework of Law No. 1/1967 as already amended by Law No. 11/1970 shall first study the effective Negative List for Foreign Capital Investments as meant in Article 1 paragraph (1), and contact the Investment Coordinating Board (BKPM) or the Regional Investment Coordinating Board (BKPMD) if further explanations are needed.
- (2) After making a sufficient study of the business field open to investments and other relevant provisions, prospective investors shall file capital investment applications to the State Minister for Mobilisation on Investment Fund (Meninves)/Chairman of BKPM according to the application procedure laid down by Meninves/Chairman of BKPM.
- (3) Based on evaluation of the capital investment applications, Meninves/Chairman of BKPM shall submit the said applications to the President along with considerations to obtain decisions.

Service (P2K) for the Jakarta Special Region on behalf of the Governor of Jakarta, shall issue the building construction licence (IMB);

- e. The Secretary of the second level region on behalf of the relevant Regent/Mayor or the Head of the Bureau of Public Order for the Jakarta Special Region on behalf of the Governor of Jakarta, shall issue the Nuisance Act licence.
- (8) The obligation to possess the Nuisance Act licence shall not apply to industrial companies of the types for which the possession of ANDAL (analysis of impacts on the environment) is compulsory or companies located in industrial estates/bonded zones.
- (9) After receiving capital investment approval from Meninves/Chairman of BKPM, investors within a specified period shall submit to BKPM master lists of capital goods as well as basic materials and complementary.
- (10) Based on evaluation of the master lists as meant in paragraph (9), Meninves/Chairman of BKPM shall issue decisions on facilities/relief of import duty and other import levies.
- (11) Applications for amendments of plans for capital investments already approved by the President, including amendments of project expansion, shall be filed by investors to Meninves/Chairman of BKPM for approval according to the procedure laid down by Meninves/Chairman of BKPM.

Part Three

Capital Investments in Non-Oil/Gas Mining and in Forestry

Article 3

- (1) Applications for domestic capital investments in non-oil/gas mining shall be filed to Meninves/Chairman of BKPM :
 - a. on the basis of working contracts between prospective investors and the government in this case the Ministry of Mines and Energy for

the exploitation of minerals of the strategic category;

- b. on the basis of mining concession for the exploitation of minerals of the vital category;
 - c. on the basis of regional mining licences for the exploitation of minerals of the non-strategic and non-vital category.
- (2) Applications for foreign capital investments in non-oil/gas mining pursuant to the laws in force shall be filed to Meninves/Chairman of BKPM on the basis of working contracts between prospective investors and the government in this case the Ministry of Mines and Energy.
 - (3) The applications for capital investments in non-oil/gas mining as meant in paragraph (1) and paragraph (2) including applications for amendments of capital investments already approved by the government, shall be arranged and settled according to the provisions in Article 1 and Article 2 of this presidential decree.

Article 4

- (1) Applications for domestic capital investments and foreign capital investments in forestry shall be filed to Meninves/Chairman of BKPM on the basis of industrial crop forest exploitation concessions issued by the Minister of Forestry.
- (2) The application for capital investments in forestry as meant in paragraph (1) including applications for amendments of capital investments already approved by the government, shall be arranged and settled according to the provisions in Article 1 and Article 2 of this presidential decree.

Part Four

Obligations of Investors

Article 5

- (1) The investors as meant in Article 1 and Article 2 of this presidential decree shall be obligated to realise

- their capital investments in line with the provisions already approved.
- (2) Any change in the implementation of the provisions as meant in paragraph (1) shall obtain prior approval from Meninves/Chairman of BKPM.
 - (3) In order to obtain the approval as meant in paragraph (2), investors shall file application to Meninves/Chairman of BKPM as stipulated in Article 1 paragraph (2) and Article 2 paragraph (2).
 - (4) All investors shall be obligated to submit periodical reports on the realisation of their capital investments to BKPM, in the phase of project construction as well as in the phase of business operation particularly within the framework utilising facilities, according to the models and procedure of reporting laid down by Meninves/Chairman of BKPM.

Part Five

Development and Control of Implementation

Article 6

- (1) The development and control of capital investment implementation under PMA/PMDN arrangements shall be conducted by BKPM along with relevant technical ministries and BKPM.
- (2) The control of implementation as meant in paragraph (1) shall cover periodical as well as incidental inspections of PMA/PMDN realisation and fulfillment of the provisions already laid down by the government.
- (3) BKPM shall actively identify problems being faced by PMA/PMDN investors and assist them in the solution of the difficulties.
- (4) Results of the development and control of capital investment implementation shall be submitted by Meninves/Chairman of BKPM to the President.

CHAPTER II SANCTIONS

Article 7

In the case of the implementation of capital investments

failing to comply with the approval and provisions already stipulated by the government and/or investors failing to carry out the obligation of submitting reports on capital investment realisation as meant in Article 5, the investors concerned shall be subject to sanctions pursuant to the laws in force, including revocation of the business licence and/or facilities/fiscal relief already granted.

CHAPTER III TRANSITIONAL PROVISIONS

Article 8

- (1) Applications for the location licence already filed before the enforcement of this presidential decree shall be granted by the Governor.
- (2) The location licence as meant in paragraph (1) shall be issued not later than 30 days as from the date of stipulation of this presidential decree.

CHAPTER IV CONCLUSION

Article 9

Further provisions required for the implementation of this presidential decree shall be stipulated by relevant Ministers jointly as well as individually after consultation with the Coordinator Minister for Economy, Finance and Development Supervision and the Coordinator Minister for Industry and Trade.

Article 10

This presidential decree shall come into force as from the date of stipulation.

Stipulated in Jakarta
On October 23, 1993

THE PRESIDENT OF THE REPUBLIC
OF INDONESIA,

sgd.

SOEHARTO

DECREE OF THE STATE MINISTER FOR MOBILISATION ON INVESTMENT FUNDS/CHAIRMAN OF THE INVESTMENT COORDINATING BOARD NO. 15/SK/1993

ON

THE PROCEDURE FOR FILING APPLICATIONS FOR DOMESTIC CAPITAL INVESTMENTS AND FOREIGN CAPITAL INVESTMENTS

**THE STATE MINISTER FOR MOBILISATION OF INVESTMENT FUNDS/
CHAIRMAN OF THE INVESTMENT COORDINATING BOARD,**

Considering :

1. that within the framework of implementing Presidential Decree No. 97/1993 on the procedure for capital investment, it is deemed necessary to improve the procedure for filing applications for and settlement of documents of capital investments;
2. that the procedure for filing applications for and settlement of documents of capital investments need further adjustments to the regulations and provisions of technical Ministers in charge of the respective sectors of activities.

In view of :

1. Law No. 1/1967 jo. Law No. 11/1970 on foreign capital investments;
2. Law No. 6/1968 jo. Law No. 12/1970 on domestic capital investments;
3. Law No. 6/1983 on general tax provisions and procedures;
4. Law No. 7/1983 jo. Law No. 7/1991 on income tax;
5. Law No. 8/1983 on value added tax on goods and services and sales tax on luxury goods;
6. Government Regulation No. 17/1986 on the authority, over the arrangement, fostering and development of industries;
7. Government Regulation No. 22/1986 jo. No. 14/1990 on bonded zones;
8. Government Regulation No. 24/1986 jo. No. 9/1993 on the periods of licences for foreign capital investments companies;

9. Government Regulation No. 24/1987 on foreign capital investments in the export trade sector;
10. Government Regulation No. 17/1992 on requirements for share ownership in foreign capital investment companies;
11. Presidential Decree No. 26/1980 on the establishment of the Regional Investment Coordinating Board;
12. Presidential Decree No. 33/1981 on the Investment Coordinating Board as already amended by Presidential Decree No. 78/1982.
13. Presidential Decree No. 16/1987 on the simplification of industrial business licensing;
14. Presidential Decree No. 53/1987 on regional representative offices of foreign companies;
15. Presidential Decree No. 53/1989 on industrial estates;
16. Presidential Decree No. 25/1991 on the status, task, function and organisational structure of the Investment Coordinating Board;
17. Presidential Decree No. 96/M/1993;
18. Presidential Decree No. 97/1993 on the procedure for capital investments.

DECIDES :

By revoking the Decision of the Chairman of the Investment Coordinating Board No. 10/1985 jis. No. 05/1986, No. 13/1986 and No. 06/1987;

To stipulate :

DECREE OF THE STATE MINISTER FOR MOBILISATION OF INVESTMENT FUNDS/

CHAIRMAN OF THE INVESTMENT
COORDINATING BOARD NO. 15/SK/1993 ON THE
PROCEDURE FOR FILING APPLICATIONS FOR
DOMESTIC CAPITAL INVESTMENTS AND
FOREIGN CAPITAL INVESTMENTS.

CHAPTER I
GENERAL PROVISIONS

Article 1

Hereinafter referred to as :

1. Applications for new capital investments are applications for capital investments, within the framework of domestic capital investments (PMDN) as well as foreign capital investments (PMA), along with relevant facilities, which are filed by prospective capital investors for setting up and undertaking new investments.
2. Applications for expansion of capital investments are applications for additional capital investments along with relevant facilities to increase the capacity and/or variety of production of goods/services, which are filed by companies already obtaining PMDN/PMA approval.
3. Applications for expansion of capital investments in the sector of agriculture are applications for additional investments to finance any of the following activities :
 - a) Diversification, namely increasing the number of crop varieties.
 - b) Rejuvenation/rehabilitation which makes use of superior seedlings.
 - c) Intensification, namely increasing production without expanding land.
 - d) Increasing the production capacity of the processing unit.
 - e) Expansion of agricultural areas.
 - f) Integration of business operations with upstream and downstream industries.
4. Applications for restructuring along with relevant facilities are applications for the replacement of part of and or addition to a complete lot of production machines or replacement of a complete lot of production machines owned, and the said replacement or addition is solely needed for adjustments to production requirements and product marketing without increasing production capacity.
5. Applications for amendment of capital investments along with relevant facilities are applications for changes in capital investment provisions already stipulated in capital investment approval, PMDN as well as PMA, excluding expansion and restructuring.
6. PMDN approval is the approval of capital investments along with relevant facilities, which is granted by the State Minister for Mobilisation of Investments Funds (Meninves)/Chairman of the Investment Coordinating Board (BKPM) to statutory bodies, individuals or other business units for the realisation of capital investments in certain lines of business pursuant to the capital investment policy and provisions under Law No. 6/1968 jo. Law No. 12/1970 on domestic capital investments, effective also as the principle licence or the provisional business licence.
7. PMA approval is the approval of capital investments along with relevant facilities, which is granted by the President Republic of Indonesia as laid down in notifications of presidential approval (SPPP) by the State Minister for Mobilisation of Investments Funds (Meninves)/Chairman of BKPM, to applicants for the realisation of capital investments in certain lines of business pursuant to the capital investment policy and provisions under Law No. 1/1967 jo. Law No. 11/1970 on foreign capital investments, effective also as the principle licence or the provisional business licence.
8. Approval of expansion, amendment and restructuring is the approval of changes in capital investments along with relevant facilities, which is granted by Meninves/Chairman of BKPM to PMA as well as PMDN for the realisation of expansion and

- amendment of capital investments, and restructuring of machines and equipment.
9. The fixed business licence (IUT) is the licence which shall be possessed by companies, for the realisation of commercial production activities; particularly for industrial/manufacturing companies, the realisation is according to the installed capacity.
 10. The expansion business licence is the licence which shall be possessed by companies already realising commercial production expansion; particularly for industrial/manufacturing companies, the realisation is according to the installed capacity.
 11. Approval of establishment of the regional representative office of foreign companies is the approval granted by Meninves/Chairman of BKPM for setting up an office under one or more foreign citizens appointed by a foreign company or a group of foreign companies overseas, as the representative handling the interests of a company or companies in a certain region of several countries besides Indonesia and domiciled in Indonesia.
 12. Status change is the change of status of capital investments from PMDN or non PMA/PMDN into PMA, or from PMA into PMDN, as a consequence of a change in share ownership.
 13. Merger/consolidation is the combination of 2 (two) or more companies already engaged in commercial production into one company, which will continue all activities in the surviving company, while the companies combined are liquidated, and in the case of one of them having the status of PMA, the company resulting from merger/consolidation becomes a PMA.
 14. Capital investment implementation licences are licences from central government and regional administration agencies, which are needed by capital investors for the realisation of their capital investments.
 15. Approval of capital investment facilities is the approval of the granting of capital investment facilities from central government agencies.

16. Capital investments progress reports (LKPM) are reports on the developments of activities of PMDN and PMA companies according to the models and procedure already laid down.
17. The bonded zone company/management is the authority or state owned corporation in the form of a Persero (state limited liability company) especially set up for the purpose of operating and or managing bonded zones..

Article 2

PMDN/PMA companies already obtaining approval letters from Meninves/Chairman of BKPM shall file applications for capital investment implementation approval and or licences from central government and or regional administration agencies, which are required for the realisation of their capital investments.

Article 3

The capital investment implementation approval and licences from the central government are made up of :

1. Approval of the granting of facilities of exemption from and or relief of import duty on capital goods. This approval is issued by Meninves/Chairman of BKPM on behalf of the Minister of Finance for the granting or relief of or exemption from import duty on capital goods for capital investments already approved by the government.
2. Approval of the granting of facilities of exemption from and or relief of import duty on basic materials and or complementary materials. This approval is issued by Meninves/Chairman of BKPM on behalf of the Minister of Finance, which is needed by capital investment projects already approved by the government for 2 (two) years' production in the case of new projects, and for 1 (one) year production in the case of expansion projects turning out different products with different basic materials and or complementary materials.
3. Approval of the suspension of payment of value added tax (PPN) and or sales tax on luxury goods (PPnBM).

This approval is issued by the Chairman of BKPM to capital investors already registered as taxable companies (PKP) to obtain the suspension of payment of PPN or PPhBM on certain capital goods for the process of production of taxable goods or services, excluding spare parts, as long as the capital goods are used according to their designation and are not transferred.

4. The limited importer's identification number (APIT). APIT is issued by Meninves/Chairman of BKPM on behalf of the Minister of Trade and applicable as the licence to import capital goods and basic materials and or complementary materials for use in the production process of capital investment projects already approved by the government.
5. The decision on the plan for the use of expatriates (RPTKA). This decision is issued by Meninves/Chairman of BKPM on behalf of the Minister of Manpower, which constitutes approval of the planned number, functions and duration of use of expatriates in the period of production and serves as the basis for the entry of expatriates and the issuance of the expatriate working permit.
6. The decision on the expatriate working permit (IKTA). This decision is issued by Meninves/Chairman of BKPM or Chairman of BKPM (regional investment coordinating board) on behalf of the Minister of Manpower based on RPTKA as the permit for companies to employ expatriates in certain functions and duration.
7. The fixed business licence (IUT) IUT is issued by Meninves/Chairman of BKPM on behalf of the Minister in charge of developing the relevant business line.
8. The expansion business licence This licence is issued by Meninves/Chairman of BKPM on behalf of the Minister in charge of developing the relevant business line, for the realisation of increased capacity and variety of production of goods or services.

CHAPTER II
APPLICATION FOR NEW CAPITAL
INVESTMENTS
PART ONE
DOMESTIC CAPITAL INVESTMENTS

Article 4

- (1) Applications for new capital investments under PMDN arrangements can be filed by limited liability companies (PT), cooperatives, state owned corporations (BUMN)/regional-administration owned companies (BUMD), partnership companies (CV), firms (Fa), or individuals.
- (2) Applications for new capital investments as meant in paragraph (1) shall be submitted in writing by using model 1/PMDN according to the specimen in Attachment 1 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM, and by enclosing the following documents :
 - a. 1. Records of the Articles of Association of companies for PT, BUMN/BUMD, CV or Fa.
 2. Records of Basic Rules of the Organisation already approved for cooperatives.
 3. Copies of Identification cards (KTP) for individuals.
 - b. Letters of power of attorney if applications are not signed by applicants themselves.
 - c. Copies of taxpayer registration code numbers (NPWP) of applicants.
 - d. 1. Flowcharts of the production process with explanations and kinds of basic/complementary materials for manufacturing industries.
 2. Description of business activities for investments in services.
- (3) Approval of capital investments under PMDN arrangements shall be issued by Meninves/Chairman of BKPM in the form of the letter of approval (SP) with copies addressed to :

- a. The Minister of Home Affairs
 - b. The Minister in charge of developing the relevant capital investment business line.
 - c. The Minister of Finance.
 - d. The Governor of Bank Indonesia.
 - e. The State Minister for Agrarian Affairs/Head of the National Land Agency (BPN).
 - f. The State Minister for Environment Affairs/ Head of BAPEDAL (board of control over impacts on the environment).
 - g. The Governor/Head of the first level region in this case the Chairman of local BKPM.
- (4) SP shall be valid for 3 (three) years starting from the its issuance date except otherwise stipulated for certain fields by Meninves/Chairman of BKPM.

PART TWO FOREIGN CAPITAL INVESTMENTS

Article 5

- (1) Applications for new capital investments under PMA arrangements can be filed by foreign participants in the form of statutory bodies and Indonesian participants in the form of limited liability companies (PT), cooperatives state owned corporations (BUMN)/ regional-administration owned companies (BUMD), partnership companies (CV), firms (Fa) or individuals.
- (2) For new capital investments under PMA arrangements with share capital being entirely owned by foreign partners, application can be filed by foreign partners in the form of statutory bodies.
- (3) Applications for new capital investments as meant in paragraph (1) and paragraph (2) shall be submitted in writing by using model I/PMA according to the specimen in Attachment 2 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM, and by enclosing the following documents :
 - a. For Indonesian partners.
 1. Records of the Articles of Association of

- companies for PT, BUMN/BUMD, CV of Fa.
 2. Records of Basic Rules of the Organisation already approved for cooperatives.
 3. Copies of identification cards (KTP) for individuals.
 4. Copies of taxpayer registration code numbers (NPWP).
- b. For foreign partners.
 - Records of Articles of Association of companies with English or Indonesian translations.
 - c.
 1. Flowcharts of the production process with explanatios and kinds of basic/ complementary materials for manufacturing industries.
 2. Descriptions of business activities for investments in services.
 - d. Draft joint venture agreements in English or Indonesian initialed by all joint venture participants.
 - e. Letters of power of attorney if applications are not signed by applicants themselves.
- (4) Based on evaluation of application for capital investments, Meninves/Chairman of BKPM shall submit the applications to the President along with considerations to obtain decisions.
- (5) Presidential approval of capital investments under PMA arrangements shall be conveyed by Meninves/ Chairman of BKPM to capital investors in the form of notifications of presidential approval (SPPP) with copies addressed to the institutions as meant in Article 4 paragraph (3).
- (6) SPPP shall be valid for 3 (three) years starting from its issuance date, otherwise stipulated for certain fields by Meninves/Chairman of BKPM.

CHAPTER III
CAPITAL INVESTMENTS IN NON OIL/GAS
MINING
PART ONE
DOMESTIC CAPITAL INVESTMENTS

Article 6

Applications for new capital investments under PMDN arrangements in non oil/gas mining for the category of strategic and vital minerals shall be filed to Meninves/Chairman of BKPM after mining concessions have been granted by the Ministry of Mines and Energy.

Article 7

Applications for new capital investments under PMDN arrangements in coal mining shall be filed to Meninves/Chairman of BKPM after mining concessions have been obtained from the Ministry of Mines and Energy or after coal mining exploitation cooperation agreements have been signed between prospective capital investors and PT (Persero) Tambang Batubara Bukit Asam.

Article 8

Applications for capital investments under PMDN arrangements in the mining of C-category minerals shall be filed to Meninves/Chairman of BKPM after regional mining licences (SIPD) have been granted by local regional administrations.

PART TWO
FOREIGN CAPITAL INVESTMENTS

Article 9

Applications for new capital investments under PMA arrangements in non oil/gas mining except coal shall be filed to Meninves/Chairman of BKPM after principle approval of working contracts has been granted by the Minister of Mines and Energy.

Article 10

Applications for new capital investments under PMA

arrangements in coal mining shall be filed to Meninves/Chairman of BKPM after principle approval of coal mining exploitation cooperation agreements between prospective capital investors and PT (Persero) Tambang Batubara Bukit Asam has been granted by the Minister of Mines and Energy.

CHAPTER IV
FIXED BUSINESS LICENCE (IUT)

Article 11

- (1) *Capital investments companies shall be obligated to possess IUT for the commencement of commercial production.*
- (2) *Applications for IUT as meant in paragraph (1) shall be submitted in writing by using the IUT form according to the specimen in Attachment 3 to Meninves/Chairman of BKPM with copies addressed to the Chairman of BKPM, and by enclosing the following documents :*
 - a. *Copies of the location licence.*
 - b. *Copies of the building construction licence.*
 - c. *Copies of the Nuisance Act licence except industrial companies located in industrial estates or copies of approval of the environment management plan (RKL) and the environment monitoring plan (RPL) for companies obligated to conduct analyses of impacts on the environment (AMDAL).*
 - d. *Land titles.*
 - e. *Capital investment progress reports (LKPM).*
 - f. *Statements on readiness for commercial production.*
- (3) *IUT shall be issued by Meninves/Chairman of BKPM on behalf of the Minister in charge of the relevant business line, which is valid as long as companies are engaged in production, and be conveyed to applicants with copies addressed to the institution as meant in Article 4 paragraph (3).*

CHAPTER V
APPLICATIONS FOR EXPANSION OF CAPITAL
INVESTMENTS
PART ONE
DOMESTIC CAPITAL INVESTMENTS

Article 12

- (1) Applications for expansion of capital investments under PMDN arrangements shall be filed by PMDN companies already in possession of IUT.
- (2) Applications for expansion as meant in paragraph (1) shall be submitted in writing by using model II/ PMDN according to the specimen in Attachment 4 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPMD, and by enclosing the following documents :
 - a. Copies of IUT.
 - b. Descriptions of the process of production/ activities of expansion business for the business line which is different from the line referred to in IUT.
- (3) Approval of expansion of capital investments under PMDN arrangements shall be issued by Meninves/ Chairman of BKPM in the form of the letter of approval (SP) with copies addressed to the institutions as meant in Article 4 paragraph (3).
- (4) SP shall be valid for 2 (two) years starting from its issuance date except otherwise stipulated for certain fields by Meninves/Chairman of BKPM.

PART TWO
FOREIGN CAPITAL INVESTMENTS

Article 13

- (1) Applications for expansion of capital investments under PMA arrangements shall be filed by PMA companies already in possession of IUT.
- (2) Applications for expansion as meant in paragraph (1) shall be submitted in writing by using model II/PMA

according to the specimen in Attachment 5 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPMD, and by enclosing the following documents :

- a. Copies of IUT.
 - b. Descriptions of the process of production/ activities of expansion business for the business line which is different from the line referred to in IUT.
- (3) Approval of expansion of capital investments under PMA arrangements shall be issued by Meninves/ Chairman of BKPM in the form of the letter of approval (SP) with copies addressed to the institutions as meant in Article 4 paragraph (3).
 - (4) SP shall be valid for 2 (two) years starting from its issuance date except otherwise stipulated for certain fields by Meninves/Chairman of BKPM.

CHAPTER VI
AMENDMENT OF CAPITAL INVESTMENTS
PART ONE
CHANGE OF NAMES OF COMPANIES

Article 14

- (1) Any change of names of companies under PMA/ PMDN arrangements shall be notified in writing by the companies concerned to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPMD.
- (2) Notifications of change of names of the relevant companies shall be submitted by using model IIA according to the specimen in Attachments 6 along with change of name documents.
- (3) Meninves/Chairman of BKPM shall convey the notifications of change of names as referred to in paragraph (2) to the institutions as meant in Article 4 paragraph (3).

PART TWO
CHANGE OF LOCATIONS OF PROJECTS OR
BUSINESS ACTIVITIES

Article 15

- (1) Any change of locations of projects or business activities from the locations as stipulated in SP/SPPP or IUT to locations in other provinces shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the change of locations as meant in paragraph (1) shall be submitted in writing by using model IIB according to the specimen in Attachment 7 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM.
- (3) Approval of change of locations shall be issued by Meninves/Chairman of BKPM in the form of SP of change of locations and conveyed to applicants with copies addressed to the institutions as meant in Article 4 paragraph (3).
- (4) Any change of locations in the same province shall be notified in writing to the Chairman of local BKPM with copies addressed to Meninves/Chairman of BKPM, on the condition that the SP/SPPP or IUT already granted remains valid.

PART THREE
CHANGE OF STATUS OF COMPANIES INTO
PMA

Article 16

- (1) Any change of status of non PMA/PMDN companies into PMA companies shall obtain approval from the President.
- (2) Applications for change of status of non PMA/PMDN companies or PMDN companies into PMA companies shall be submitted in writing by using model IIC according to the specimen in Attachment 8 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM, and by enclosing the following documents :

- a. Records of the Articles of Association of non PMA/PMDN companies or PMDN companies.
 - b. Copies of IUT for companies already engaged in commercial production or copies in the letter of approval/principle licence for companies not yet engaged in commercial production.
 - c. Capital investment progress reports (LKPM) for projects whose SP has exceeded the period of 6 (six) months and which do not yet possess IUT.
 - d. In the case of new foreign investors buying the shares of non PMA/PMDN companies or PMDN companies, applicants must enclose :
 1. Letters of power of attorney of new foreign investors.
 2. Records of the Articles of Association of new foreign investors with English or Indonesian translations
 - e. In the case of PMA companies buying the shares of non PMA/PMDN companies or PMDN companies, applicants must enclose :
 1. Copies of IUT of PMA companies.
 2. Letters of power attorney if applications are not signed by applicants themselves.
 - f. Draft joint venture agreements.
 - g. Minutes of shareholder general meetings of applicant companies which will change status.
- (3) Meninves/Chairman of BKPM shall submit the applications as meant in paragraph (2) to the President along with considerations to obtain decisions.
 - (4) Presidential approval of applications for change of status of companies into PMA shall be conveyed by Meninves/Chairman of BKPM to capital investors in the form of SPPP with copies addressed to the institutions as meant in Article 4 paragraph (3).

PART FOUR
CHANGE OF INVESTMENT PLANS

Article 17

- (1) Any change in investment plans which alters the facilities granted shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the change as meant in paragraph (1) shall be submitted in writing by using model IID according to the specimen in Attachment 9 to Meninves/Chairman of BKPM with copies to the Chairman of local BKPMD.
- (3) Approval of change of investment plans as referred to in paragraph (1) shall be issued by Meninves/Chairman of BKPM in the form of SP of change of investment plans and conveyed to applicants with copies addressed to the institutions as meant in Article 4 paragraph (3).

PART FIVE
RESTRUCTURING

Article 18

- (1) Any replacement or addition of machines within the framework of restructuring which need facilities for PMA/PMDN companies shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for replacement or addition of machines as meant in paragraph (1) shall be submitted in writing by using model IIE according to the specimen in Attachment 10 to Meninves/Chairman of BKPM with copies to the Chairman of local BKPMD, and by enclosing the following documents :
 - a. lists of machines/equipment to be replaced;
 - b. lists of substitute machines/equipment to be imported and their prices in United States dollars; and or
 - c. lists of additional machines/equipment and their prices in United States dollars.

- (3) Approval of restructuring shall be issued by Meninves/Chairman of BKPM in the form of SP of restructuring and conveyed to applicants with copies addressed to the institutions as meant in Article 4 paragraph (3).

PART SIX
EXTENSION OF PERIOD OF SP OR SPPP

Article 19

- (1) The extension of the validity period of SP or SPPP for PMDN or PMA companies already expiring before commercial production shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the extension as meant in paragraph (1) shall be submitted only in the following cases :
 - a. the validity period of SP or SPPP has expired;
 - b. outside the business of services, main activities have been undertaken, namely :
 1. the procurement of land, and
 2. the construction of buildings/factories; or
 3. the import of machines and equipment.
 - c. in the business of services, main activities have been undertaken, namely;
 1. the construction of buildings; or
 2. the import of machines/equipment; or
 3. the recruitment of expert personnel.
- (3) Applications for approval of the extension as meant in paragraph (1) shall be submitted in writing by using model IIF according to the specimen in Attachment 11 to Meninves/Chairman of BKPM before the expiration of the relevant SP or SPPP, with copies addressed to the Chairman of local BKPMD.
- (4) Approval of extension of the validity period of SP or SPPP shall be issued by Meninves/Chairman of BKPM in the form of SP of extension and conveyed to applicants with copies addressed to the institutions as meant in Article 4 paragraph (3).

PART SEVEN
CHANGE OF SHARE OWNERSHIP

Article 20

- (1) Any change of share ownership of PMDN companies requires no approval from Meninves/Chairman of BKPM.
- (2) a. Any change of share ownership of PMA companies not yet engaged in commercial production shall be reported to Meninves/Chairman of BKPM.
b. Any change of share ownership of PMA companies already engaged in commercial production requires no approval from Meninves/Chairman of BKPM.
- (3) Reports of the change as meant in paragraph (2) point a shall be submitted in writing by using model IIIA according to the specimen in Attachment 12 to Meninves/Chairman of BKPM with copies addressed to Bank Indonesia and the Chairman of local BKPM, along with records of articles of association of new foreign partners in the case of addition of foreign participants.

PART EIGHT
CHANGE OF STATUS OF PMA COMPANIES
INTO PMDN

Article 21

- (1) Any change of status of PMA companies into PMDN companies shall obtain approval from the President.
- (2) Applications for the change of status as meant in paragraph (1) shall be submitted in writing by using model IIIB according to the specimen in Attachment 13 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM, and by enclosing the following documents :
 - a. Approval of change of share ownership from Meninves/Chairman of BKPM.
 - b. Copies of documents of transfer of all foreign shares to Indonesian partners.

- (3) Meninves/Chairman of BKPM shall submit the applications as meant in paragraph (2) to the President along with considerations to obtain decisions.
- (4) Presidential approval of applications for change of status of PMA companies into PMDN shall be conveyed by Meninves/Chairman of BKPM to applicants in the form of SPPP with copies addressed to the institutions as meant in Article paragraph (3).

PART NINE
EQUAL TREATMENT FOR PMA COMPANIES

Article 22

- (1) PMA companies already engaged in commercial production can be granted the same treatment as that given to PMDN companies, on the condition that at least 51% of their paid-up capital is owned by the State and or national private companies through direct ownership and or the capital market.
- (2) Applications for equal treatment shall be submitted in writing by using model IIIC according to the specimen in Attachment 14 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM.
- (3) Approval of equal treatment for PMA shall be issued by Meninves/Chairman of BKPM in the form of SP and conveyed to applicants with copies addressed to the institutions as meant in Article 4 paragraph (3).

PART TEN
MERGER OR CONSOLIDATION

Article 23

- (1) In the case of merger or consolidation of :
 - a. PMA companies into a PMDN, approval shall be obtained from the President.
 - b. PMDN companies into a PMA, it shall be reported to Meninves/Chairman of BKPM.

(2) Applications for merger or consolidation as meant in paragraph (1) point a shall be submitted in writing by using model IIID.1 according to the specimen in Attachment 15 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM, and by enclosing the following documents :

- a. Copies of IUT of the respective companies being combined.
- b. Minutes of shareholder general meetings in notarial deeds of the respective companies being combined.
- c. Copies of LKPM of the latest period for PMA companies and PMDN companies.

(3) Presidential approval of applications for merger or consolidation as referred to in paragraph (2) shall be conveyed to applicants by Meninves/Chairman of BKPM in the form of IUT with copies addressed to the institutions as meant in Article 4 paragraph (3).

(4) Reports on merger or consolidation as meant in paragraph (1) point b. shall be submitted to Meninves/Chairman of BKPM by using model IIID.2 according to the specimen in Attachment 15.a.

(5) The merger or consolidation as referred to in paragraph (3) shall be stipulated by Meninves/Chairman of BKPM and conveyed to capital investors with copies addressed to the institutions as meant in Article 4 paragraph (3).

CHAPTER VII APPLICATIONS FOR ESTABLISHMENT OF A REGIONAL REPRESENTATIVE OFFICE OF FOREIGN COMPANIES

Article 24

- (1) The establishment of a regional representative office of foreign companies shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the approval as meant in paragraph (1) shall be submitted in writing by using model V

according to the specimen in Attachment 16 to Meninves/Chairman of BKPM with copies addressed to the Chairman of local BKPM, and by enclosing the following documents :

- a. Letters of appointment or power of attorney from boards of foreign companies to would-be executives of the regional representative office of foreign companies.
- b. Records of the Articles of Association of foreign companies with English or Indonesian translations.
- c. Statements of preparedness of residence and not being engaged in other work in Indonesia.

CHAPTER VIII CAPITAL INVESTMENT IMPLEMENTATION APPROVAL & LICENCES PART ONE IMPORT OF CAPITAL GOODS

Article 25.

- (1) The import of capital goods with facilities for PMDN companies and PMA companies shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the approval as meant in paragraph (1) for new projects or expansion except those especially stipulated in Chapter IX, shall be submitted in writing by using model IV/master list of capital goods according to the specimen in Attachment 17 to Meninves/Chairman of BKPM, and by enclosing the following documents :
 - a. Illustrations of sites of machines/equipment.
 - b. Manuals of machines/equipment except used machines/equipment.
 - c. Especially within the framework of restructuring, manuals of additional machines/equipment are sufficient except used machines/equipment.
- (3) Approval of import of capital goods with facilities shall be issued by Meninves/Chairman of BKPM in

the form of SP of customs facilities for capital goods with the master list of capital goods attached, and conveyed to applicants with copies addressed to the Directorate General of Customs and Excise and technical ministries.

- (4) The validity period of SP of customs facilities for capital goods shall be the same as the validity period of SP/SPPP.

PART TWO
IMPORT OF BASIC/COMPLEMENTARY
MATERIALS

Article 26

- (1) The import of basic/complementary materials with facilities shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the approval as meant in paragraph (1) shall be submitted in writing by using model IV/ materials according to the specimen in Attachment 18 to Meninves/Chairman of BKPM and by enclosing the following documents :
 - a. Lists of machines/equipment installed, along with technical specification data.
 - b. Calculations of the need for basic/complementary materials to be imported.
- (3) Approval of import of basic/complementary materials with facilities shall be issued by Meninves/Chairman of BKPM in the form of SP of customs facilities for basic/complementary materials with the master list of basic/complementary materials attached, and conveyed to applicants with copies addressed to the Directorate General of Customs and Excise and technical ministries.
- (4) The validity period of SP of customs facilities for basic/complementary materials shall be one year for PMDN companies or PMA companies not yet possessing IUT, and shall be extendable for an indefinite period after the possession of IUT.

PART THREE
LIMITED IMPORTER'S IDENTIFICATION
NUMBER (APIT)

Article 27

- (1) PMDN companies or PMA companies which will realise capital goods and or basic/complementary materials imports themselves shall possess the limited importer's identification number (APIT) issued by Meninves/Chairman of BKPM.
- (2) Applications for APIT as meant in paragraph (1) shall be submitted in writing by using the APIT form according to the specimen in Attachment 19 to Meninves/Chairman of BKPM and by enclosing the following documents :
 - a. APIT cards which are signed by those entitled to sign import documents and stamped with corporate seals.
 - b. Copies of latest articles of association regarding compositions of boards of directors.
 - c. Copies of taxpayer registration code numbers (NPWP).
 - d. Letters of power of attorney on duty stamped papers, for those signing import documents other than directors.
 - e. Photographs of 3x4 cm of those signing import documents in sets of two.
 - f. Copies of expatriate work permits/IKTA for expatriates signing import documents.
- (3) APIT shall be valid as of the stipulation date and for the entire territory of the Republic of Indonesia as long as the companies concerned are still engaged in production.
- (4) In the case of any change of corporate boards of directors or those signing import documents by power of attorney, the relevant companies shall file applications to Meninves/Chairman of BKPM for approval of amendment of APIT.

PART FOUR
FACILITIES OF TAXATION & SUSPENSION OF
PAYMENT OF PPN AND OR PPNBM ON
CERTAIN CAPITAL GOODS.

Article 28

- (1) The suspension of payment of PPN and or PPNBM on the import of certain capital goods needed for the process of production of taxable goods or services excluding spare parts, as long as the capital goods are used according to their designation and are not transferred, shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the approval as meant in paragraph (1) shall be submitted in writing by using the PPN form according to the specimen in Attachment 20 to Meninves/Chairman of BKPM, and by enclosing the following documents :
 - a. Copies of confirmation of taxable companies (PPKP) as legalised by the local Tax Service.
 - b. Transaction contracts of certain capital goods with sellers/suppliers or invoices.
 - c. Letters of technical explanations about relations of the machines/equipment covered in applications and the process of production.
- (3) Approval of suspension of payment of PPN and or PPNBM on imports shall be issued by Meninves/Chairman of BKPM in the form of SP of suspension and conveyed to applicants with copies addressed to the Directorate General of Taxation, the Directorate General of Customs and Excise.

PART FIVE
EXPATRIATE WORK PERMITS

Article 29

- (1) Plans for the use of expatriates (RPTKA) for PMDN companies and PMA companies shall obtain approval from Meninves/Chairman of BKPM.
- (2) Applications for the approval as meant in paragraph (1) shall be submitted in writing by using the RPTKA

form according to the specimen in Attachment 21 to Meninves/Chairman of BKPM, and by enclosing the following documents :

- a. Organisational charts.
 - b. Records of articles of association, especially for PMA.
 - c. Evidence of reporting of personnel as validated by the Office of the Ministry of Manpower.
 - d. Copies of identification cards (KTP) of Indonesian personnel (TKI) as associates and letters of appointment as company employees.
- (3) Approval of RPTKA shall be issued by Meninves/Chairman of BKPM in the form of decrees (SK) on RPTKA and conveyed to applicants with copies addressed to the Ministry of Manpower, relevant technical ministries and the local BKPM.

Article 30

- (1) Expatriate workers (TKA) of PMDN companies and PMA companies who are ready to leave for Indonesia shall possess visas for temporary residence (VBS) issued by representative offices of the Republic of Indonesia (embassies of the Republic of Indonesia).
- (2) Applications for VBS shall be submitted in writing by using the Ppt 2 form according to the specimen in Attachment 22 to Meninves/Chairman of BKPM, and by enclosing the following documents :
 - a. Copies of passports of relevant TKA in complete pages.
 - b. Latest curriculum vitae signed by relevant TKA.
 - c. Copies of diplomas/certificates of education and experience of work already translated into Indonesian or English and validated by relevant corporate executives.
 - d. Copies of documents of appointment, or minutes of shareholder general meetings for the position of directors.
- (3) Recommendations by using model TA.01 for the applications as meant in paragraph (2) shall be issued by the Head of the Bureau of Licensing and Facilities

of BKPM on behalf of Meninves/Chairman of BKPM and conveyed to the Director General of Immigration.

- (4) The Director General of Immigration based on the TA.01 recommendations shall notify representative offices of the Republic of Indonesia to issue VBS for the TKA concerned.

Article 31

The relevant companies shall file applications for provisional entry permits (KIM/S) to the local Immigration Office after the arrival of TKA with VBS.

Article 32

- (1) TKA who have obtained KIM/S and are working in Indonesia shall apply for IKTA (expatriate work permits).
- (2) Applications for IKTA shall be submitted in writing to the Chairman of local BKPM/D by enclosing :
 - a. Four 4x6 cm passport photographs.
 - b. Copies of passports in complete pages.
 - c. Copies of KIM/S.
 - d. Names and programs of education and training for TKI as associates and would-be successors of expatriate personnel.
 - e. Copies of SK-RPTKA.
- (3) Approval of the applications as meant in paragraph (2) shall be issued by the Chairman of BKPM/D in the form of SK-IKTA for Meninves/Chairman of BKPM on behalf of the Minister of Manpower and conveyed to applicants with copies addressed to the local Office of the Ministry of Manpower.

Article 33

- (1) Approval of extension of IKTA for TKA whose work permits have expired shall be issued by the Chairman of BKPM/D.
- (2) Applications for IKTA extension as meant in paragraph (1) shall be submitted in writing by filing out model TA.02 according to the specimen in Attachment 23 to the Chairman of local BKPM/D

within 30 (thirty) days before the expiration of relevant IKTA, and by enclosing the following documents :

- a. Books of IKTA legislation.
- b. Evidence of settlement of expatriate tax.
- c. Evidence of settlement of the compulsory education and training fund, if already subject to this provision.
- d. Reports on realisation of education and training programs and or personnel Indonesianisation programs.
- e. Copies of SK-RPTKA still in force.
- f. Two 4x6 cm passport photographs.

- (3) Based on the approval of applications as meant in paragraph (2), the Chairman of BKPM/D shall issue recommendations for the handling of KIM/S extension to the Directorate General of Immigration by using model TA.02.
- (4) The Chairman of local BKPM/D can issue provisional IKTA certificates for 2 (two) months by using model TA.04 according to the specimen in Attachment 24.
- (5) Based on the approval of KIM/S extension as meant in paragraph (3), companies shall submit copies of KIM/S extension to the Chairman of local BKPM/D for the issuance of SK (decisions) on IKTA extension on behalf of Meninves/Chairman of BKPM.

Article 34

- (1) TKA other than boards of directors who have worked for 3 (three) years successively in Indonesia can have their IKTA extended with the note that they shall leave the Indonesian territory in the status of exit permit only (EPO).
- (2) If the TKA as meant in paragraph (1) are still needed by companies, the sponsor companies shall take a new procedure by using TA.01 recommendations for which the applications are submitted to Meninves/Chairman of BKPM on the basis of effective RPTKA.

**CHAPTER IX
CAPITAL INVESTMENTS IN BONDED ZONES**

Article 35

- (1) *Applications for capital investments in bonded zones, PMDN as well as PMA, shall be filed to bonded zone companies/managing bodies by using the application form as determined in this decree.*
- (2) *Bonded zone companies/managing bodies shall be delegated the authority to evaluate and approve applications for new projects, expansion and amendments under PMDN located in bonded zones for and on behalf of Meninves/Chairman of BKPM.*
- (3) *Bonded zone companies/managing bodies shall be delegated the authority to evaluate applications for new PMA located in bonded zones and results of evaluation of the new applications shall be delivered to Meninves/Chairman of BKPM as recommendations to the President, whereby presidential approval of the said applications shall be conveyed by Meninves/Chairman of BKPM to applicants in the form of SPPP through bonded zone companies.*
- (4) *Bonded zone companies/managing bodies shall be delegated the authority to evaluate applications for expansion and amendments under PMA located in bonded zones and results of evaluation of the applications shall be delivered to Meninves/Chairman of BKPM, who shall further issue approval of the said applications and convey it to applicants in the form of SP through bonded zone companies.*
- (5) *Bonded zone companies/managing bodies shall be delegated the authority to evaluate applications for capital investment implementation licences needed and issue approval of the said applications to be conveyed to applicants in the form of SP.*

**CHAPTER X
REPORTING OBLIGATION**

Article 36

All companies already obtaining approval from the government within the framework of PMDN and PMA shall be obligated to submit capital investment progress reports (LKPM) pursuant to the provisions in force.

**CHAPTER XI
SANCTIONS**

Article 37

In the case of applicants for approval of capital investments purposely falsifying data and or documents enclosed, the applications concerned shall become unlawful and the approval issued by the government shall be cancelled, and the parties concerned be liable to legal sanctions pursuant to the provisions in force.

**CHAPTER XII
MISCELLANY**

Article 38

Any approval, licence or decree which has limited period of validity shall be automatically cancelled on the date of expiration of the approval, licence or decree unless its extension is approved by Meninves/Chairman of BKPM.

TRANSITIONAL PROVISION

Article 39

Applications for capital investments in previous models already received by BKPM before the stipulation of this decree shall be settled according to new provisions.

CONCLUSION

Stipulated in Jakarta.
On October 23, 1993.

Article 40

- (1) *With the enforcement of this decree, all provisions which are not in line with this decree shall be declared null and void.*
- (2) *Matters which are not yet regulated in this decree shall be further stipulated by a decree of Meninves/ Chairman of BKPM.*
- (3) *This decree shall come into force as from the date of stipulation.*

THE STATE MINISTER FOR MOBILISATION OF
INVESTMENT FUNDS/
CHAIRMAN OF THE INVESTMENT
COORDINATING BOARD,

sgd.

SANYOTO SASTROWARDOYO

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA
NUMBER 20 OF 1994

CONCERNING

SHARE OWNERSHIP IN COMPANIES ESTABLISHED UNDER
FOREIGN CAPITAL INVESTMENTS

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- a. that within the framework of accelerating the promotion and expansion of economic activities and national development in general, measures are needed to further foster a secure business climate and better guarantee the continuity of foreign capital investments;
- b. that for this purpose, it is deemed necessary to improve provisions concerning share ownership in companies established under foreign capital investments as stipulated in Government Regulation No. 50/1993.

In view of:

1. Article 5 paragraph (2) of the Constitution of 1945;
2. Law No. 1/1967 on foreign capital investments (State Gazette of 1967 No. 1, Supplement to State Gazette No. 2818) as already amended by Law No. 11/1970 (State Gazette of 1970 No. 46, Supplement to State Gazette No. 2943).

DECIDES:

To stipulate:

THE GOVERNMENT REGULATION CONCERNING SHARE OWNERSHIP IN COMPANIES ESTABLISHED UNDER FOREIGN CAPITAL INVESTMENTS.

Article 1.

Foreign capital investment approval shall be granted within the framework of establishment of foreign capital investment companies as limited liability companies based on the Indonesian law and domiciled in Indonesia.

Article 2.

- (1) Foreign capital investments can be realised in the form of:
 - a. joint ventures between foreign capital and capital owned by Indonesian citizens and or Indonesian statutory bodies; or
 - b. direct investments, in the sense of the entire capital being owned by foreign citizens and or foreign statutory bodies.
- (2) The amount of capital invested under foreign capital investment shall be determined according to the economic feasibility of relevant business activities.

Article 3.

- (1) Companies which are established under foreign capital investments shall be granted the business licence for a period of 30 (thirty) years as from their commercial production.
- (2) The business licence can be extended by the State Minister for Mobilisation of Investment Funds/Chairman of the Investment Coordinating Board, if the companies as meant in paragraph (1) continue their business operations beneficial to the economy and national development.
- (3) The State Minister for Mobilisation of Investment Funds/Chairman of the Investment Coordinating Board shall stipulate further provisions concerning the renewal of the business licence after consultations with relevant Ministers.

Article 4.

- (1) The business activities of companies established under foreign capital investments can be located throughout the territory of the Republic of Indonesia.

- (2) In regions where bonded zones or industrial estates have been built, locations of business activities of the companies in such zones shall receive priority.

Article 5.

- (1) Companies which are established as meant in Article 2 paragraph (1) point a. shall be allowed to undertake business activities in the fields categorised as being vital to the state and involving the livelihood of the population at large, namely ports, generation and transmission as well as distribution of electricity to the public, telecommunications, shipping, airlines, drinking water supply, public railways, atomic energy reactors and mass media.
- (2) Companies which are established as meant in Article 2 paragraph (1) point b. shall not be allowed to undertake business activities as stipulated in paragraph (1).

Article 6

- (1) The shares of Indonesian partners in companies which are established as meant in Article 2 paragraph (1) point a. shall at least amount to 5% (five percent) of the entire paid-in capital of the companies upon their establishment.
- (2) Further sale of shares of the companies beyond the total as meant in paragraph (1) to Indonesian citizens or Indonesian statutory bodies whose share capital is owned by Indonesian citizens can be done through direct ownership according to agreements reached by relevant parties and or through the domestic capital market.

Article 7.

- (1) Companies which are established as meant in Article 2 paragraph (1) point b. within a maximum period of fifteen years as from their commercial production shall sell part of their shares to Indonesian citizens and or Indonesian statutory bodies through direct ownership or through the domestic capital market.
- (2) The transfer of shares as meant in paragraph (1) shall not change the corporate status.

Article 8.

- (1) In addition to increasing their share capital, compa-

nies established under foreign capital investments which have been engaged in commercial production shall also be allowed :

- a. to set up new companies; and or
 - b. to buy the shares of existing companies established under domestic capital investments and or companies established under neither foreign capital investments nor domestic capital investments, whether already engaged in commercial production or not, through the domestic capital market.
- (2) The shares as meant in paragraph (1) point b. can also be purchased by companies which are established as meant in Article 2 paragraph (1) point a. through direct ownership according to agreements reached by relevant parties.
- (3) The purchase of shares as meant in paragraph (1) and paragraph (2) can be realised as long as the fields of business of the relevant companies remain open to foreign capital investments.
- (4) The purchase of shares as meant in paragraph (1) point b. shall not change the corporate status.

Article 9.

- (1) Foreign statutory bodies shall be allowed to buy the shares of companies established under foreign capital investments, companies established under domestic capital investments, and companies established under neither foreign capital investments nor domestic capital investments, whether already engaged in commercial production or not.
- (2) The purchase of shares of companies established under domestic capital investments and companies established under neither foreign capital investments nor domestic capital investments as meant in paragraph (1) can only be realised if their fields of business upon the share purchase are open to foreign capital investments.
- (3) The purchase of shares as meant in paragraph (1) shall be realised through direct ownership and or the domestic capital market.
- (4) The direct ownership by foreign statutory bodies as meant in paragraph (3) can only be done in the effort to rescue and restore the sound condition of relevant companies.
- (5) The purchase of shares as meant in paragraph (1) and paragraph (2) shall not change the corporate status.

Article 10.

Further provisions which are required for the implementation of this government regulation shall be stipulated by the State Minister for Mobilisation of Investment Funds/Chairman of the Investment Coordinating Board after consultations with relevant Ministers.

Article 11.

With the enforcement of this government regulation, Government Regulation No. 50/1993 on the requirements for share ownership in companies under foreign capital investments, shall be declared null and void.

Article 12.

Companies established under foreign capital investments which have been set up and or engaged in commercial production before the enforcement of this government regulation, based on agreements reached by shareholders can make adjustments to the provisions in this government regulation.

Article 13.

This government regulation shall come into force as from the date of promulgation.

For public cognizance, this government regulation shall be promulgated by publishing it in the State Gazette of the Republic of Indonesia.

Stipulated in Jakarta.

On May 19, 1994.

THE PRESIDENT OF THE REPUBLIC
OF INDONESIA

sgd.

SOEHARTO

Promulgated in Jakarta.

On May 19, 1994.

THE MINISTER/STATE SECRETARY,

sgd

MOERDIONO

ELUCIDATION
ON
GOVERNMENT REGULATION NO. 20/1994
CONCERNING
SHARE OWNERSHIP IN COMPANIES ESTABLISHED UNDER
FOREIGN CAPITAL INVESTMENTS

GENERAL

With the changes taking place in the political and economic structures of various parts of the world and the expanding globalisation of the world economy, many countries which were formerly closed to foreign capital investments have now offered vast opportunities to foreign capital within the framework of increasing job opportunities, promoting growth and expanding economic activities. The situation has created even tighter competition in foreign capital investments for intensified and more extensive investment operations.

The changes in various parts of the world as described above proceed rapidly, thereby prompting many countries to promote efficiency in their economies in order to guarantee continuous investment increase and expansion as well as productivity enhancement. This condition has also given rise to very tough competition in world trade.

The circumstances as meant above coincide with the endeavour undertaken by the Indonesian nation to further intensify and expand economic activities as well as to renew its national development by allowing an increasingly greater role to society and the business sector in development financing. This role is intended among others to further boost investments and productivity and expand the export market by enhancing competitiveness, so that a multiple impact can be created such as economic growth, more job opportunities, absorption of materials/commodities produced by communities and higher state receipts from taxes.

With a view to encouraging the participation of the public and the private sector in strengthening competitiveness in investments and world trade as well as increasing the transfer of technology, managerial knowhow and capital so as to be capable of promoting investments, growth and economic activities in different regions, it is deemed necessary to provide more attractive incentives for foreign capital investments.

In order to achieve the objective, it is deemed necessary to improve provisions concerning share ownership in companies established under foreign capital investments.

ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

Paragraph (1)

In this provision, Indonesian statutory bodies cover state owned corporations, regional administration owned companies, cooperatives and other national companies.

Paragraph (2)

For the purpose of facilitating capital investments, the economic feasibility of relevant business activities and amount of capital for investments are fully determined by the capital investors concerned.

Article 3

Paragraph (1)

Sufficiently clear.

Paragraph (2)

The world beneficial means that the realisation of business activities of the companies established under foreign capital investments produces positive impacts among others on exports, labour, tax revenue, the environment and the national economy.

Paragraph (3)

The renewed business licence is granted for a period of 30 years and the requirements for requesting such a licence are simpler than those for new permits.

Provisions of the renewal of the business licence for companies established under foreign capital investments must be stipulated by taking account of the considerations of relevant Ministers, such as the

Minister of Industry on matters connected with technical aspects of production, the Minister of Finance on matters related to taxes, the Minister of Trade on matters dealing with exports/imports, the Minister of Environment Affairs on matters having to do with waste handling, and other Ministers according to necessity.

Article 4

Paragraph (1)

Sufficiently clear.

Paragraph (2)

The business activities of companies established under foreign capital investments can also be undertaken on their plots of land already owned on the basis of land titles, as long as the areas are within regions/territories designated for industries pursuant to the Spatial Layout General Plan or the Spatial Layout Detailed Plan.

Article 5

Sufficiently clear

Article 6

Paragraph (1)

The increase in share ownership of Indonesian partners is realised according to agreements reached between Indonesian partners and foreign partners.

The said agreements involve periods and share ratios as agreed upon by both parties on the basis of the principle of mutually profitable cooperation and the continuity of business activities of relevant companies.

Paragraph (2)

In this regulation, direct ownership means direct placement.

Article 7

Paragraph (1)

In this provision, Indonesian statutory bodies cover state owned corporations, regional-administration owned companies, cooperatives and other national companies. The total of shares sold by companies established under foreign capital investments is according to agreements reached by relevant parties on the basis of the principle of mutually profitable cooperation and the continuity of business activities of relevant companies and or provisions of the domestic capital market.

Paragraph (2)

This affirmation is meant to abolish the differentiation so far followed, such as between foreign investment companies, domestic investment companies, and non-foreign/domestic investment companies.

This is intended to simplify administration. Besides, basically all the said companies legally have the same position, viz. Indonesian statutory bodies subject to the Indonesian law.

Article 8

Paragraph (1)

Point a. :

The new companies set up by the companies stipulated herein have the status of companies established under foreign capital investments.

Pont b. :

Sufficiently clear

Paragraph (2)

The agreements referred to herein involve periods and share ratios as agreed upon by both parties on the basis of the principle of mutually profitable cooperation and the continuity of business activities of relevant companies.

Paragraph (3)

Sufficiently clear

Paragraph (4)

Sufficiently clear

Article 9

Paragraph (1)

The purchase of shares is meant to encourage cooperation between foreign companies which are non Indonesian statutory bodies and companies which are Indonesian statutory bodies in order to obtain international market opportunities within the framework of export promotion.

Paragraph (2)

Sufficiently clear

Paragraph (3)

Sufficiently clear

Paragraph (4)

Sufficiently clear

Paragraph (5)

See the explanation of Article 7 paragraph (2).

Article 10 through Article 13

Sufficiently clear

DECREE OF THE PRESIDENT OF REPUBLIK OF INDONESIA
NUMBER 54 OF 1993

CONCERNING

THE LIST OF SECTORS
THAT ARE CLOSED FOR CAPITAL INVESTMENT

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

Considering : that within the framework of further enhancing capital investment, it is deemed necessary to review the list of sectors that are closed for capital investment.

- In view of :
1. Article 4 paragraph (1) of the Constitution of 1945;
 2. Law No. 1 of 1967 on Foreign Capital Investment (State Gazette of 1967 No. 1, Supplement to State Gazette No. 2818) as already amended by Law No. 11 of 1970 (State Gazette of 1970 No. 46, Supplement to Gazette No. 2943);
 3. Law No. 6 of 1968 on Domestic Capital Investment (State Gazette of 1968 No. 33, Supplement to State Gazette No. 2853); as amended by Law No. 12 of 1970 (State Gazette of 1970 No. 47, Supplement to the State Gazette No. 2944);
 4. Presidential Decree No. 33 of 1980 on the establishment of the Regional Investment Coordinating Board;
 5. Presidential Decree No. 33 of 1981 the Investment Coordinating Board as already by Presidential Decree No. 76/1982;

6. Presidential Decree No. 25 of 1991 on the status task, function and organizational structure of the Investment Coordinating Board;

7. Presidential Decree No. 33 of 1992 concerning the procedure of capital investment.

DECIDES

By revoking Presidential Decree No. 32 of 1992 on the list of sectors that are closed for capital investment;

To stipulate :

THE PRESIDENTIAL DECREE CONCERNING
THE LIST OF SECTORS THAT ARE CLOSED FOR
CAPITAL INVESTMENT

Article 1

- (1) The list of sectors that are closed for capital investment, as attached to this presidential decree, shall comprise the sectors which are closed to all kinds of capital investment (Appendix I), and the sectors which are reserved for small scale industry/in cooperation with medium or large scale industry (Appendix II).
- (2) The list as meant in paragraph (1) shall be effective for entire territory of the Republic of Indonesia.

Article 2

The List sectors that are closed for capital investment shall be effective for 3 (three) years and subject to annual review if considered necessary according to the needs and development of the situation.

Article 3

(1) *The licensing of the capital investment under the law on foreign capital investment based on the presidential approval for certain capital investment plan, shall be settled by The State Minister of Investment Fund Mover/Chairman of the Investment Coordinating Board (BKPM) on behalf of the Ministers subordinating the relevant sectors, pursuant to the prevailing laws and regulation.*

(2) *The licensing of capital investment under the Law on domestic capital investment shall be settled by The State Minister of Investment Fund Mover/Chairman of the Investment Coordinating Board (BKPM) on behalf of the Minister subordinating the relevant sectors, pursuant to the prevailing laws and regulations.*

(3) *The licensing of capital investment outside the Law on Foreign Capital Investment and the Law on the Law on Domestic Capital Investment shall be settled by the Ministers subordinating the relevant sectors according to their respective areas of authority, in line with the prevailing law and regulations.*

(4) *Especially with regard to foreign capital investment in the field of general mining taking the form of Contract of Work, the procedure shall be stipulated by the Minister of Mines and Energy.*

Article 4

This Presidential Decree shall come into force as from date of stipulation.

Stipulated in Jakarta

On June 10, 1993

THE PRESIDENT OF
THE REPUBLIC OF INDONESIA

Signed

SOEHARTO

No.	Sectors of Investment	I	II	III
I. SECTORS THAT ARE CLOSED FOR CAPITAL INVESTMENT EXCEPT IF IT CAN FULLFILL CERTAIN CONDITIONS				
1.	<i>Powdered Milk/condensed milk Except integrated with dairy cattle raising</i>	X	X	X
2.	<i>Palm oil based cooking oil Except with guarantee of the raw materials</i>	X	X	X
3.	<i>Block Board Except using wood waste as the raw material</i>	X	X	X
4.	<i>Sawmill Except in Irian Jaya and East Timor provinces</i>	X	X	X
5.	<i>Plywood (Raw) Except in Irian Jaya and East Timor provinces</i>	X	X	X
6.	<i>Finished/Semi-finished rattan products Except in the provinces outside Java Island</i>	X	X	X
7.	<i>Finished/Semi-finished mangrove wood products Except integrated with its culture</i>	X	X	X
8.	<i>Printing of valuable paper</i>	X	X	X
	1) Postage stamps			
	2) Duty stamps			
	3) Banknotes			
	4) Passport			
	5) Stamped postages			
	<i>Except for state printing enterprise/ Perum Peruri</i>			
9.	<i>Ethyl Alcohol Except for the technical grade</i>	X	X	X
10.	<i>Explosive materials and the like Except for state Owned Enterprise (Perum Dahana)</i>	X	X	X

Note: I = PMA (foreign investment);
 II = PMDN (domestic investment);
 III = non PMA/PMDN;
 X = closed;
 - = open.

No.	Sectors of Investment	I	II	III
11.	Utility Boiler Except manufacturing, at least equal to the present localization implemented by exiting manufacturer.	X	X	X
12.	Motor Vehicles a. Medium truck, light truck, pick-up, bus and mini bus b. Multi purpose vehicles/jeep c. Sedan and station wagon d. Two wheeled motor vehicles Except manufacturing, at least equal to present localization implemented by existing manufacturer	X	X	X
13.	Aircraft a. Jet engine or propeller for transportation b. Helicopter c. Aircraft engine : piston combustion engines, turbo propeller, other turbo gas, ram jet, pulse jet and turbo fans. d. Aircraft equipment and accesories : Aircraft/Helicopter propeller and landing equipment Except for/in cooperation with PT. IPTN	X	X	X
II. SECTORS THAT ARE CLOSED FOR CAPITAL INVESTMENT, EXCEPT FOR NEW PROJECT THAT EXPORT AT LEAST 65% OF THE PRODUCTION, OR EXPANSION OF THE EXISTING PROJECT				
14.	Manufacturing of cigarettes/SPM	X	X	X
15.	Medichine : a) Pharmaceutical formulation b) Traditional herbal drugs (jamu)	X	-	-

Note: I = PMA (foreign investment);
 II = PMDN (domestic investment);
 III = non PMA/PMDN;
 X = closed;
 = open.

No.	Sectors of Investment	I	II	III
III. SECTORS THAT ARE CLOSED FOR NEW AND EXPANSION INVESTMENT PROJECT EXCEPT 100% OF THE PRODUCTION FOR EXPORT				
16.	Artificial sweeteners (syclamate and saccharine) New and expansion project should be located in Bonded Zone or Export Oriented Production Entrepot	X	X	X
17.	Liquor & Alcoholic Beverage New and expansion project should be located in Bonded Zone or Export Oriented Production Entrepot	X	X	X
18.	Fireworks New and expansion project should be located in Bonded Zone or Export Oriented Production Entrepot	X	X	X
19.	Disposable gas lighter New and expansion project should be located in Bonded Zone or Export Oriented Production Entrepot	X	X	X
IV. SECTORS IN SERVICES THAT ARE CLOSED FOR FOREIGN INVESTMENT				
20.	Taxi/Bus	X	-	-
21.	Local Shipping	X	-	-
22.	Scheduled/Chartered Flight	X	-	-
23.	Maintenance workshop for aircraft and its componensts, operating at airport	X	-	-
24.	Retail trade	X	-	-

Note: I = PMA (foreign investment);
 II = PMDN (domestic investment);
 III = non PMA/PMDN;
 X = closed;
 - = open.

No.	Sectors of Investment	I	II	III
25.	Trade Supporting Service : Advertising	X	-	-
26.	Private Television Broadcasting and Radio Broadcasting	X	-	-
27.	Operation of Cinema	X	-	-
V. SECTORS THAT ARE ABSOLUTELY CLOSED FOR CAPITAL INVESTMENT				
28.	Contracting Services in Forest Logging	X	X	X
29.	Casino/gambling	X	X	X
30.	Utilization and Cultivation of sponges	X	X	X
31.	Marijuana and the like	X	X	X
32.	Vencer (rotary)	X	X	X
33.	Penta chlorophenol, Dichloro Diphenyl Trichloro Ethane (DDT), Dieldrin, Chlordane.	X	X	X

Note: I = PMA (foreign investment);
 II = PMDN (domestic investment);
 III = non PMA/PMDN;
 X = closed;
 - = open.

No. Sectors of Investment

1. Non pedigree chicken breeding
2. Dairy cow breeding
3. Shrimp larva culture
4. Mackerel, Flying fish, A sea-fish (Caranx) fishing
5. Shrimp catching
6. Eel, escargot, crocodile, frog culture
7. Coral fish catching such as sea bass, ribbon fish, grouper, sea perch and the like
8. Catching of squid, jelly fish, sea cucumber and the like, and the catching of ornamental fish.
9. The plantation of clove, pepper, melinjo, coandlenut, vanilla, kapulaga, cinnamon, nutmeg, siwalan, sugar palm and leaf (lontar)
10. Medicinal Herbs
Except ginger
11. Pickled/sweetened fruits and vegetables
12. Salted dried fish and the like
13. Smoked fish and the like
14. Various flours from grains
 - 1) Rice flours
 - 2) Peanuts flours
 - 3) Cassava flours
15. Brown sugar
16. Fermented soybean paste (tauco)
17. Soybean sauce
18. Fermented soybean (tempe)
19. Soybean curd
20. Fish and shrimp paste
21. Traditional cakes
22. Other cakes
23. Yarn spinning :
 - 1) The production of cocoon
 - 2) Silk yarn (filament) No. Sectors of Investment
 - 3) Fiber Decoration
Except integrated silk textile industry
24. Improved yarn :
 - 1) Bleaching
 - 2) Dyeing
 - 3) Motive yarn/tie dyeing
by manual means
25. Fabric printing and finishing
Printing by manual means, except integrated with upstream industry
26. Hand-made batiks
27. Weaving :
 - 1) ATBM (non mechanical) weaving
 - 2) Traditional weaving (gedogan)
28. Knitting, by manual means
29. Traditional hat/cap
30. Lime and lime products :
 - 1) Quicklime
 - 2) Hydrated lime
 - 3) Slaked lime
 - 4) Products made from lime
31. Clay ceramic goods for household uses :
 - 1) Unglazed household appliances
 - 2) Unglazed household adornments
 - 3) Unglazed various types of flowerports

32. *Agricultural tools :*

- 1) *Hoe*
- 2) *Shovels*
- 3) *Plows*
- 4) *Harrow*s
- 5) *Rakers*
- 6) *Crowbars*
- 7) *Hand sickles*
- 8) *Weed remover*
- 9) *Reaping*
- 10) *Stewed knife*
- 11) *Sprinkle*
- 12) *Hand Sprayer*
- 13) *Manual paddy threshers*
- 14) *Manual maize threshers*
- 15) *Manual hullers*

33. *Hand Tools :*

- 1) *Chisels*
- 2) *Hammer (small type)*
- 3) *Wood planes*
- 4) *Trowels*

34. *Hand Cutters :*

- 1) *Chopping knife*
- 2) *Axes*

35. *Traditional Indonesian musical instruments :*

36. *Handicrafts not elsewhere classified :*

- 1) *Handicrafts made from plant basic materials*
- 2) *Handicraft made from basic materials of animal origin*
- 3) *Artificial flowers and decoratives*

37. *Raw rattan processing*

**REGULATION OF STATE MINISTER FOR AGRARIAN AFFAIRS/HEAD OF THE
NATIONAL LAND AGENCY NO. 2/1993**
ON
**THE PROCEDURE FOR COMPANIES TO OBTAIN LOCATION LICENCES AND LAND
TITLES WITHIN THE FRAMEWORK OF CAPITAL INVESTMENTS**
**THE STATE MINISTER FOR AGRARIAN AFFAIRS/HEAD OF
THE NATIONAL AGENCY,**

Considering :

- a. *that with the stipulation of Presidential Decree No. 97/1993 on the Procedure for Capital Investments, it is deemed necessary to reregulate the procedure for companies to obtain location licences and land titles within the framework of capital investments;*
- b. *that in conjunction with the matters, it is necessary to stipulate the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency.*

In view of :

1. *Law No. 28/1958 on the Supervision of the Transfer of Titles on Plantation Land (State Gazette of 1956 No. 73, Supplement to State Gazette No. 1125);*
2. *Law No. 29/1956 on the Regulations of and Actions Against Plantation Land (State Gazette of 1956 No. 74, Supplement to State Gazette No. 1126);*
3. *Law No. 5/1960 on Basis Regulations on Agrarian Principles (State Gazette of 1960 No. 104, Supplement to State Gazette No. 2043);*
4. *Law No. 1/1967 on Foreign Capital Investments (State Gazette of 1967 No. 1, Supplement to State Gazette No. 2818) as already amended by Law No. 11/1970 (State Gazette of 1970 No. 46, Supplement to State Gazette No. 2943);*
5. *Law No. 6/1968 on Domestic Capital Investments (State Gazette of 1968 No. 33, Supplement to State Gazette No. 2853), as already amended by Law No. 12/1970 (State Gazette of 1970 No. 46, Supplement to State Gazette No. 2944);*
6. *Law No. 5/1974 on Principles of Administration in Regions (State Gazette of 1974 No. 38, Supplement to State Gazette No. 3037);*
7. *Law No. 16/1974 on Flats (State Gazette of 1985 No. 75, Supplement to State Gazette No. 3318);*
8. *Law No. 24/1992 on Spatial Layout (State Gazette of 1992 No. 115, Supplement to State Gazette No. 3501);*
9. *Government Regulation No. 10/1961 on Land Registration (State Gazette of 1961 No. 28, Supplement to State Gazette No. 2171);*
10. *Government Regulation No. 6/1988 on the Coordination of Activities of Vertical Agencies in Regions;*
11. *Presidential Decree No. 26/1988 on the National Land Agency jo. Presidential Decree No. 96/M/93 on the Establishment of the Sixth Development Cabinet;*
12. *Presidential Decree No. 34/1992 on the Utilisation of Land Under Land Titles for Building Construction and Land Titles for Business Operation for Joint Venture Companies in the framework of Foreign Investments;*
13. *Presidential Decree No. 44/1993 on the Occupation, Main Task, Function, Organisational Structure and Work System of State Ministries;*
14. *Presidential Decree No. 94/1993 on the Procedure for Capital Investments;*
15. *Regulation of the Minister of Agriculture and Agrarian Affairs No. 11/1962 Jis. No. 2/1964 and Joint Decree of the Minister of Home Affairs and the Minister of Agriculture No. 2/Pert/OP/8/1969-8/*

1969 on Decisions and Requirements for the Granting of Land Titles for Business Operation to National Private Companies.

DECIDES :

By revoking Regulation of the Head of the National Land Agency No. 3/1992 on the Procedure for Companies to Obtain Reservation of Land, Location Licences, for the Granting, Extension and Renewal of titles on Land and the Issuance of Its Certificates.

To stipulate :

THE REGULATION OF THE STATE MINISTER FOR AGRARIAN AFFAIRS/HEAD OF THE NATIONAL LAND AGENCY CONCERNING THE PROCEDURE FOR COMPANIES TO OBTAIN LOCATION LICENCES AND LAND TITLES WITHIN THE FRAMEWORK OF CAPITAL INVESTMENTS.

CHAPTER I GENERAL PROVISIONS

Article 1

Hereinafter referred to as :

1. A location licence shall be a licence granted to a company to obtain land in accordance with the Regional Spatial Layout, and shall serve as a licence for the transfer of title.
2. A land title for business operation shall be a title to manage land directly controlled by the Government for the purpose of agricultural, plantation, fishery or animal husbandry business as meant in Article 28 paragraph (1) of Law No. 5/1960.
3. A land title for building construction shall be a title to establish and own a building on land which is not personal/corporate property as meant in Article 35 paragraph (1) of Law No. 5/1960.
4. A company shall be a company with the status of an Indonesian legal entity and an individual company of an Indonesian citizen.

5. The Minister shall be the State Minister for Agrarian Affairs/Head of the National Land Agency.
6. Regional Office shall be the Provincial Office of the National Land Agency.
7. Land Office shall be the Regencial/Municipal Land Agency.

CHAPTER II LOCATION LICENCES

Article 2

- (1) To obtain a location licence a company shall file an application to the Head of Land Office by filling out Form 1 as attached (see Attachment 1 to this regulation).
- (2) In filling the application for the licence as meant in paragraph (1) an applicant shall enclose copies of the letter of capital investment approval for a domestic investment company (PMDN), or the notification on approval by the President for a foreign investment company (PMA), or the principle approval from the technical ministry for non PMA/PMDN.
- (3) Copies of the application as meant in paragraph (1) shall be addressed to :
 - a. The Head of Regional Office.
 - b. The Regional Investment Coordinating Board for PMA/PMDN, the vertical agency of the technical ministry in the Second Level Region for non PMA/PMDN.
 - c. The Development Planning Board of the Second Level Region, or the Development Planning Board of the First Level Region especially for applicants in the Special Region of Capital City of Jakarta (DKI Jakarta).

Article 3

- (1) In preparing a location licence the Head of the Land Office shall work together with relevant agencies.
- (2) The Head of the Land Office shall issue a decision on

an application for a location licence not later than 12 (twelve) work days after the application is received in a complete manner.

- (3) The Head of the Land Office shall send the decision on a location licence to the relevant company and make the decision in accordance with the specimen as attached (see attachment II to this regulation) with copies addressed to the Regent/Mayor and relevant agencies as meant in Article 2 paragraph (3).
- (4) Based on the decision on a location licence the company shall be entitled to the land.
- (5) The location licence shall be granted for a period of 12 (twelve) months and extended once for 12 (twelve) months only.

Article 4

- (1) The application for the extension of a location licence shall be filed not later than 10 (ten) work days before the expiry of the location licence and shall include reasons for the extension.
- (2) The Head of the Land Office shall issue a decision on the extension of the location licence in accordance with the specimen as attached (see Attachment III to this regulation) not later than 10 (ten) work days after dossiers of the application for a location licence are received in a complete manner.
- (3) The delivery of the decision on the extension of a location licence shall be done according to Article 3 paragraph (3).

Article 5

The issuance and extension of the location licence shall be liable to administrative fees in accordance with the prevailing provision.

CHAPTER III LAND ACQUISITION

Part One The Transfer of Land Titles

Article 6

- (1) For land acquired from a certified proprietary title, the Head of the Land Office shall issue a certificate of land title for building construction upon the request of the proprietary title holder, which is valid for 30 (thirty) years and expires on September 24 in the 30th year after the issuance of the decision on the location licence as meant in Article 3 paragraph (2).
- (2) The certificate of land title for building construction as meant in paragraph (1) shall be used to make a certificate of title transfer before the official issuing land titles (PPAT) who will register the title transfer with the local Land Office.
- (3) Land acquired from an uncertified proprietary title or customary title shall mutatis mutandis be subject to the process as meant in paragraph (1) and paragraph (2) with the provision that the certificate of land title for building construction shall be issued after the expiry of the announcement period as meant in Article 18 of Government Regulation No. 10/1961.
- (4) The certificate of title transfer for land acquired from a land title for building construction shall directly be made before the official issuing land titles (PPAT) and shall be then registered with the local Land Office under the name of the company/applicant.
- (5) The extension of a land title for building construction until September 24 as meant in paragraph (1) shall be given at a time when the transfer of the land title for building construction as meant in paragraph (4) is registered.
- (6) Land acquired from a utilization title shall mutatis mutandis be subject to provisions as meant in paragraph (1), (2), (4) and (5).
- (7) A plot of land acquired from a land title for business operation shall be given a certificate of land title for business operation along with a picture of situation/ letter of separating measurement whose validity is the same as the remaining period of the land title for business operation.

- (8) *The transfer of a land title for business operation as meant in paragraph (7) and the registration of title transfer shall be done in accordance with paragraphs (4) and (5).*
- (9) *For land acquired from land controlled by the state, an applicant shall first free it from cultivation or other exploitation activities before applying for a land title.*

*Part Two
The Granting of Land Titles*

Article 7

- (1) *After obtaining a location licence from the Head of the Land Office and completing the acquisition of land, a company shall apply for a land title by filing out Form 4 as attached (see Attachment IV to this regulation).*
- (2) *An application for a land title for building construction shall be filed to the Head of the Local Land Office, and an application for a land title for business operation shall be filed to the Head of the relevant Regional Office by enclosing :*
 - a. *A location licence;*
 - b. *Evidences of land acquisition;*
 - c. *The identity of the applicant/deed on the establishment of the company already approved as a legal entity;*
 - d. *A decision of the Minister of Forestry on the release of forest areas if the land is acquired from conversion forests;*
 - e. *A picture of situation as a result of the measurement by the Local Land Office.*
- (3) *After receiving dossiers of the application for a land title for building construction in a complete manner, the following activities shall be carried out :*
 - a. *Not later than 10 (ten) work days, the committee on land inspection appointed under the prevailing regulation shall have completed the inspection of land and made a summary of the land inspection.*
 - b. *Not later than 7 (seven) work days starting from the date when the summary of land inspection is completed, the Head of the Land Office shall issue a decision on land title for building construction to the application with an area of not more than 5 (five) hectares of land.*
 - c. *The decision on the granting of a land title for building construction as meant in letter b shall be made in accordance with Form-5b as attached (see Attachment Va to this regulation), and shall be then sent by the Head of the Land Office to the applicant with copies addressed to relevant agencies.*
 - d. *The rejection of an application for a land title for building construction as meant in letter b shall be made in accordance with Form-5b as attached (see Attachment Vb to this regulation), and shall be then sent by the Head of the Land Office to the applicant with copies addressed to relevant agencies.*
 - e. *Not later than 3 (three) work days after the inspection of land the Head of the Land Office shall send to the Head of the Regional Office dossiers of the application for a land title for building construction as meant in paragraph (2) with an area of more than 5 (five) hectares of land along with considerations.*
 - f. *The Head of the Regional Office shall issue a decision on the granting of a land title for building construction not later than 7 (seven) work days starting from the receipt date of dossiers of the application as meant in letter e.*
 - g. *The decision on the granting of the land title for building construction as meant in letter f shall be made in accordance with Form-5c as attached (see Attachment Ve to this regulation), and shall be then sent by the Head of the Regional Office to the applicant with copies addressed to relevant agencies.*
 - h. *The rejection of an application for a land title for*

building construction as meant in letter e shall be made in accordance Form 5-d as attached (see Attachment Vd to this regulation), and shall be then sent by the Head of the Regional Office to the applicant with copies addressed to relevant agencies.

- (4) After receiving dossiers of an application for a land title for business operation in a complete manner, the following activities shall be carried out :
- a. The Head of the Regional Office shall instruct the committee on land inspection appointed under the prevailing regulation to make preparations for and conduct a land inspection as well as complete a summary of land inspection not later than 15 (fifteen) work days.
 - b. Not later than 7 (seven) work days starting from the date when the summary of the land inspection is completed, the Head of the Regional Office shall issue a decision on a land title for business operation to the application with an area of not more than 200 (two hundred) hectares of 1 and.
 - c. The decision on the granting of a land title for business operation as meant in letter b shall be made in accordance with Form-6a as attached (see Attachment VIa to this regulation), and shall be then sent by the Head of the Regional Office to the applicant with copies addressed to relevant agencies.
 - d. The decision on the granting of a land title for business operation as meant in letter b shall be made in accordance with Form-6a as attached (see Attachment VIa to this regulation), and shall be then sent by the Head of the Regional Office to the applicant with copies addressed to relevant agencies.
 - e. In connection with the application for a land title for business operation with an area of more than 200 (two hundred) hectares of land, not later than 7 (seven) work days starting from the date when the summary of land inspection is

completed, the Head of the Regional Office shall send to the Minister dossiers of the said application along with consideration.

- f. The Minister shall issue the decision on the granting of a land title for business operation not later than 10 (ten) work days starting from the date when dossiers of the application as meant in letter e are received.
- g. The decision on the granting of a land title for business operation as meant in letter f shall be sent by the Minister to the applicant through the Head of the relevant Regional Office with copies addressed to relevant agencies.

Article 8

Land titles for building construction shall be granted for a maximum period of 30 (thirty) years, and land titles for business operation shall be granted for a maximum period of 35 (thirty five) years.

CHAPTER IV

THE EXTENSION AND RENEWAL OF LAND TILES

Article 9

- (1) The land title for building construction and land title for business operation as meant in Article 7 shall be granted the guarantee of title extension upon the request of the title holder so long as the land is still used in accordance with its appropriation and agreement on the granting of a land for building construction in the case of the said land title for building construction being a proprietary title or utilization title.
- (2) Land titles for building construction shall be extended for a maximum period of 20 (twenty) years, while land titles for business operation shall be extended for a maximum period of 25 (twenty five) years.
- (3) Land titles for building construction shall be renewed for a maximum period of 30 (thirty) years, while land titles for business operation shall be renewed for a maximum period of 35 (thirty five) years for economic activities or certain regions to be further stipulated by the Government.

Article 10

The Minister shall stipulate further procedures for applying for the extension and renewal of titles as meant in Article 6 and 9.

**CHAPTER V
THE ISSUANCE OF CERTIFICATES OF LAND
TITLES**

Article 11

- (1) Not later than 7 (seven) work days the Head of the Local Land Office shall register and issue certificates under the name of companies or relevant recipients of titles.
- (2) In the case of the granting of new titles and/or transfer, the Head of the Land Office shall register them and then issue certificates under the name of the companies or applicants not later than 7 (seven) work days after applications or certificates from the official issuing land titles (PPAT) are received.
- (3) The Head of the Local Land Office shall send certificates to the recipients of titles and send notifications to relevant agencies by using Form 7 as attached (see Attachment VII to this regulation).

**CHAPTER VI
MORTGAGE**

Article 12

A land title for building construction of a land title for business operation under the name of company shall be used as a collateral loan under a mortgage agreement as regulated in Law No. 16/1985 on Flats and its enforcement regulation.

**CHAPTER VII
FEES**

Article 13

The granting of a land title for building construction or a land title for business operation as meant in Article 6 and 7 the issuance of a certificate as meant in Article 11 shall be liable to fees set by the Minister.

**CHAPTER VIII
SANCTIONS**

Article 14

If the recipients of titles do not meet requirements stipulated in the decisions on the granting of land titles and the land is not used in accordance with the spatial layout, the land titles for building construction or land titles for business operation already received shall be subject to sanction in accordance with the existing legislations.

**CHAPTER IX
TRANSITIONAL PROVISIONS**

Article 15

- (1) Applications for location licences, which are received from companies before, and whose decisions are being made at a time when this regulation takes effect, shall be settled by Governors/Heads of First Level Regions in accordance with the old provision not later than 12 (twelve) work days after this regulation is stipulated.
- (2) Applications for land titles, which are received from companies before, and whose titles are being prepared at a time when this regulation takes effect, shall be settled in accordance with the old provision not later than 30 (thirty) work days after this regulation is stipulated.

CHAPTER X
CLOSING PROVISION

Stipulated in Jakarta
On October 23, 1993

Article 16

With the enforcement of this regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency, all provisions which contradict to this regulation shall be declared null and void.

THE STATE MINISTER FOR AGRARIAN
AFFAIRS/
HEAD OF THE NATIONAL LAND AGENCY

Article 17

This regulation shall come into force as from the date of stipulation.

sgd.

SONI HARSONO