

New investment law for Indonesia



By Eugene V Flynn

For the first time in four decades, Indonesia has a new Investment Law, passed by the Parliament (DPR) in late March and expected to be signed into law by President Susilo Bambang Yudhoyono. The law will supersede both the 1967 Foreign Investment Law and 1968 Domestic Investment Law.

The new law integrates the previous investment laws and their implementing regulations to some extent, but affirmatively addresses some of the impediments frequently cited by foreign investors doing business in the country.

Noteworthy changes include those relating to investment approval procedures, land titles and fiscal incentives.

Investment approval procedures

The Capital Investment Coordinating Board (BKPM), currently under the control of the Department of Trade, is granted formal recognition by law for the first time, and will be reinstated to its prior status as a non-departmental institution reporting directly to the President.

Procedurally, the new law reverses the current sequence of steps in establishing a BKPM-approved company. Investors will now form the corporate entity first and then register it with BKPM thereby changing BKPM from an approval agency to a registration agency. This should streamline the investment approval process significantly.

While the law promotes BKPM as a one-stop investment centre providing integrated services, it also expressly recognises the role of provincial and regional governments in implementing capital investment. It remains to be seen whether the inevitable conflicts between and among these various bureaucratic levels can be smoothly and swiftly resolved.

Land titles

Indonesia does not recognise the concept of freehold or fee sim-

ple land rights for corporate entities, whether foreign or domestic. The two most common forms of land titles are Right of Building (Hak Guna Bangunan or HGB) and Right of Cultivation (Hak Guna Usaha or HGU).

HGB is the right to use state-owned land to construct, own and operate buildings, whether for residential, commercial or industrial use. This title was previously granted for up to 30 years with a provision to permit an extension of up to 20 additional years. Under the new law, HGB can be granted for a period of up to 80 years.

HGU is the right to use state-owned land for agricultural purposes such as plantations, ranching or fish farms. This title was previously granted for up to 35 years with a provision to permit an extension of up to 25 additional years. Under the new law, HGU can be granted for a period of up to 95 years.

Fiscal incentives

The new law is long on promises but short on specifics on the fiscal incentives to be afforded investors. Mention is made of income tax reductions, exemptions and/or reductions of import duties and Value Added Tax, accelerated depreciation schedules, and reduction in land and building taxes. In general, obtaining these incentives will require that the investment meets at least one of several criteria, e.g., labour-intensive operations, remote area development, infrastructure projects, pioneer and high-priority industries, eco-friendly projects, ventures involving technology transfers or innovative activities, and enterprises cooperating with small and medium local businesses and cooperatives.

Each of these fiscal incentives, however, will be spelled out and implemented by future decrees and regulations. As experienced investors in Indonesia are aware, the detailed regulations and their implementation by the relevant officials are the proving ground for whether touted incentives have true value.

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