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Heavy Machinery, Heavy Returns: A Golden Opportunity for Global Investors

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Indonesia is actively welcoming foreign investors through pro-business policies, including Presidential Regulation No. 10 of 2021 as amended by Presidential Regulation No. 49 of 2021 regarding the Investment Business Sector ("**PR 49/2021**"). As a major global nexus for mining activities, Indonesia plays a crucial role in supplying mineral resources to developed countries. The growing demand for mining operations has consequently driven an increasing need for heavy machinery such as dump trucks and excavators (collectively referred to as "**Equipment**"). Recognizing this potential, several leading global heavy equipment manufacturers have expanded their presence in Indonesia. This article provides key takeaways for foreign investors seeking to explore opportunities in Indonesia's heavy equipment rental industry, including regulatory considerations and strategic entry points to navigate this sector.

Business Operation and the KBLI Code

Foreign investors looking to invest in the heavy equipment rental business in Indonesia must first establish a Foreign Investment Limited Liability Company ("**PT PMA**"). Under Investment Coordinating Board Regulation No. 4 of 2021 regarding Guidelines and Procedures for Risk-Based Business Licensing Services and Investment Facilitation, a PT PMA must comply with the minimum investment value of IDR 10,000,000,000 (ten billion Rupiah) and fulfill the minimum capital requirement of at least the same amount.

Beyond the requirements above, a PT PMA operating in heavy equipment rental must also ensure it registers the appropriate Indonesian Standard Classification of Business Fields ("**KBLI**") code(s), which would be further formalized in the Business Identification Number ("**NIB**"). The selected KBLI code must align with the PT PMA's specific business activities. In this regard, heavy equipment rental businesses in Indonesia are generally classified into 2 (two) distinct models:

a. Dry Rental Activities

Although specific business practices and marketing strategies may vary among companies, dry rental activities typically refer to the straightforward leasing of heavy equipment, excluding additional services such as provision of operators, warranties, after-sales support, and Equipment insurance ("**Equipment-Related Facilities**"). The appropriate KBLI code for dry rental activities is KBLI 77393 (Rental and Leasing Activities of Construction and Civil Engineering Machinery and Equipment Without Purchase Option) ("**Dry Rental**").

b. Wet Rental Activities

Conversely wet rental activities represent a more comprehensive business model, wherein rental companies provide both equipment and Equipment-Related Facilities ("**Wet Rental**"). While Wet Rental businesses generally require the inclusion of KBLI 43905 (Rental of Construction Equipment with Operator(s)), it is important to note that incorporating KBLI 43905 subjects a PT PMA to foreign ownership restrictions. If a PT PMA exclusively engages in the rental of Equipment — excluding construction equipment such as cranes and other machinery categorized under KBLI 77393 — then the inclusion of KBLI 43905 may not be necessary.

**) The above explanation relies on the understanding that Equipment (as defined in the introductory section) is not classified as construction equipment.*

Additionally, the definition of Wet Rental provided above exclusively pertains to operational leases and does not extend to financial leases of Equipment

To maneuver around the above foreign ownership restriction, foreign investors may consider an alternative structuring approach by establishing 2 (two) separate legal entities: (i) a PT PMA engaged in Dry Rental Activities; and (ii) a PT PMA focusing on manpower or operator outsourcing services under KBLI 78300, which is also not subject to foreign share ownership limitations. Through this structure, foreign investors can engage in Wet Rental activities without requiring KBLI 43905, by implementing a three-party agreement.

Licensing and Other Requirements

Foreign investors planning to enter Indonesia's heavy equipment rental sector must obtain specific licenses to legally operate their business.

These licenses vary depending on whether the company engages in Dry Rental or Wet Rental activities, including:

a. General License - Business Identification Number (NIB)

All business entities in Indonesia, including PT PMA, including those involved in Dry Rental or Wet Rental activities, are required to possess a NIB, which ultimately outlines the permissible business activities, evident on the registered business-specific KBLI codes.

b. License Required for Dry Rental Activities

In addition to the NIB, each piece of Equipment must be certified for compliance with occupational health and safety requirements.

c. License/Other Requirements for Wet Rental Activities

In addition to the requirements applicable to Dry Rental businesses, Wet Rental activities — given their inclusion of operator services — necessitate that the operator hold valid licenses (i.e., an operator's license).

Moreover, as Wet Rental businesses often involve after-sales service and maintenance, PT PMA operators may need to establish service centers or warehouse facilities at strategic locations near key project sites to ensure ease of operation.

Challenges Faced by PT PMA in Conducting Business

A PT PMA may encounter several legal and operational challenges, including:

a. Regulatory Compliance Issues

For Wet Rental businesses, uncertainty persists regarding the applicability of KBLI 43905 for heavy equipment rental. The key regulatory challenges include: (i) lack of regulatory clarity on whether KBLI 43905 applies to all equipment (including the Equipment) or is strictly limited to construction equipment as outlined in KBLI 77393, and (ii) foreign ownership restrictions associated with KBLI 43905, which could impose limitations on foreign investors' shareholding in the PT PMA.

b. Business Operational Challenges

In practice, like most other businesses involving rental of commodities, our experience in handling clients with similar business activities has seen:

i) delays in or non-payment of rental fees by customers;

ii) return of the Equipment in sub-optimal condition, contrary to the terms outlined in the rental agreement between the PT PMA and its customers; and

iii) theft or loss of Equipment, including damage or misappropriation of spare parts.

Solutions to Overcome Such Challenges

a. Pre-Emptive Strategy

A proactive approach emphasizes mitigating potential risks before they arise. One of the most critical aspects of this strategy is ensuring that contracts between the PT PMA and its customers are thoroughly drafted, reviewed, and structured to guarantee full compliance whilst, at the same time, safeguarding the PT PMA's interests.

Beyond customer agreements, PT PMAs involved in Equipment-Related Facilities should establish well-structured contracts with: (i) Equipment manufacturers, to ensure that the manufacturers will still provide guarantees on the spare parts of the Equipment including the deployment of after-sales support (thereby delineating the need for the client to proactively provide its own after-sales team), and (ii) insurance companies, to mitigate financial risks related to the Equipment (as mentioned in the *Business Operational Challenges* section).

b. Reactive Strategy

This approach involves responding to challenges as they arise. In instances where unforeseen disputes, regulatory concerns, or contractual ambiguities emerge, seeking immediate legal and strategic counsel from an experienced advisory firm becomes imperative.

Key Points

Like many other PT PMA, the establishment of a PT PMA for a heavy equipment rental company requires a minimum investment value of IDR10,000,000,000 (ten billion Rupiah). The industry operates under two primary business models: (i) Dry Rental, which involves leasing equipment without additional services (i.e., Equipment-Related Services), and (ii) Wet Rental, which includes Equipment-Related Services.

A key compliance difference between the two lies in the requirement for operator licensing. Additionally, foreign investors in this sector face both regulatory and operational challenges, particularly uncertainty surrounding KBLI 43905's scope and its foreign ownership restrictions. Further, common operational risks such as delayed payments, equipment damage, and theft are prevalent and impact business stability.

To navigate these challenges, PT PMAs should implement pre-emptive strategies, including well-structured contractual agreements with customers, equipment manufacturers, and insurers. At the same time, a reactive approach, such as seeking immediate legal and strategic counsel, is crucial for addressing unforeseen disputes and ensuring compliance.

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The article above was prepared by Dentons HPRP's lawyers