ASEAN SECTION

[The Association of South-East Asian Nations (ASEAN) comprise Singapore, Malaysia, Indonesia, the Philippines and Thailand. This section is intended to include articles, comments and notes from the various ASEAN countries other than Singapore. For the international law aspects involving Singapore and ASEAN, including treaties, see SINGAPORE AND INTERNATIONAL LAW.]

POLICY ON FOREIGN INVESTMENT IN INDONESIA*

Indonesia is now engaged in the last year of the Second Five Year Development Plan. To provide the inflow of foreign investment, the Government enacted Law No. 1 of 1967 as amended by Law No. 11 of 1970. The Government is fully aware that utilization to maximum advantage of foreign investment to accelerate national development and the promotion of foreign capital inflow should be equally balanced by the substantial development of domestic entrepreneurs and capital. In this regard, participation of domestic investment should be encouraged and privileges should be granted to enable them to play a greater role in national development. Through harmonious development of foreign and domestic investment, the Government believes that the private sector can play a dominant role in assisting the Government's efforts to achieve the goals and objectives of Indonesia's Development Plan.

Development policies and objectives

The general policies on foreign investment on part of the goals and objectives of the Second Five Year Development Plan (*Repelita* II) which is stated in the Basic Guideline of National Policy (GBHN) and elaborated in the People Consultative Assembly No. IV/MPR of 1973.

The main goal of the *Repelita* is threefold: development growth; stability; and equity with the aim of creating social justice. The basic principle used in implementing the GBHN, *Repelita* and the Policy on Foreign Investment is the 1945 Constitution and the Five Principle of *Pancasila*. The development goal is designed to create the basic conditions of self sufficiency for further development efforts. In order to achieve these goals and objectives, fundamental changes in the economic structure, and development from an agricultural based economy into an industrial based, in which the industrial sector contribution to the Gross Domestic Product become necessary. The

* This paper was presented at the Workshop on Foreign Investment and Joint Enterprises sponsored by the International Law Center held in Jakarta on April 1978. This paper constitutes a Country Report and its contents describe the general policy of the Government of Indonesia on the role of private sector, especially foreign participation, to fill the resource-gap of the financing of national development.

composition of the population living in the non-agricultural sector will increase. The export components will comprise processed and finished products rather than raw materials. With these policies, the Indonesian economy in the near future will be diversified and therefore stronger.

In order to achieve the new economic structure, industrial and agricultural sectors are to be kept in balance. Government policy on investment priorities involves the development of agriculture and the development of industry to support the agricultural sector. The industrial priority sectors will be realized in stages, beginning with processed agricultural raw materials, processed products and, finally, finished products.

The process of strengthening the economic structure as stipulated in *Repelita* II shows a decline in the agricultural sector's contribution as 40.1% of the Gross Domestic Product at the end of *Repelita* I to 35% at the end of *Repelita* II. The non-agricultural sectors comprising industry, mining, communication will increase from 23% to 28%.

The following table shows the estimated growth sectors of the GDP as stipulated in *Repelita* II.

Annual rate of growth by sector
to GDP during *Repelita* II

Sector	% growth	Economic growth
Agriculture	46	7.5%
Industry	130	
Mining	90	
Communication	100	
Electricity	150	
Other	80	

With the rate of sectoral growth mentioned above, it is hoped the change of economic structure can be initiated to a more industrial oriented one.

Private investment and development financing

The development effort requires large funding and the source of such funding is to comprise domestic savings and foreign investment. Domestic savings in turn comprises that of public and private savings while foreign investment comprises foreign loans and foreign investments.

In order to reach the development growth of 7.5% per year, in *Repelita* II, it is estimated that the required development funds for the five year period requires a total investment of Rp. 11,415 billion. It is estimated that the domestic savings will comprise of Rp. 8,183 billion and foreign sources Rp. 3,232 billion. It means that the average annual funds required are Rp. 1,600 billion from domestic savings and Rp. 640 million or $1.6 million from foreign sources. Though the amount of foreign sources required is increasing from year to year, its rate in the total development funds is decreasing, while that of domestic savings is growing.

The following tables show the composition of development fund requirement during the Second Five Year Plan (*Repelita* II).

The GDP and the Investment during *Repelita* II [1]

	1974/75	1975/76	1976/77	1977/78	1978/79	Total
1. GDP	7,565	8,785	10,200	11,840	13,745	
2. Investment	1,445	1,900	2,280	2,640	3,150	11,445
a. Development Budget	616	972	1,058	1,196	1,408	5,250
1. Public Saving	(402)	(780)	(850)	(978)	(1,184)	(4,194)
2. Foreign Loan	(214)	(192)	(208)	(218)	(224)	(1,056)
b. Others	829	928	1,222	1,444	1,742	6,165
3. Investment/GDP in %	19.1%	21.6%	22.3%	22.3%	22.9%	

The Estimate of development financing (and its percentage to GDP) during *Repelita* II

	1974/75	1975/76	1976/77	1977/78	1978/79	Total
I. Domestic Savings	881(11.6)	1,322(15.0)	1,596(15.6)	1,931(16.3)	2,453(17.8)	8,183
1. Public Savings	402(5.3)	780(8.9)	850(8.3)	978(8.3)	1,184(8.6)	4,194
2. Private Savings	479(6.3)	542(6.2)	746(7.3)	953(8.0)	1,269(9.2)	3,989
II. Foreign source	564(7.5)	578(6.6)	684(6.7)	709(6.0)	697(5.1)	3,232
	1,445(19.1)	1,900(21.6)	2,280(22.3)	2,640(22.3)	3,150(22.9)	11,415

1 Source: *Repelita* II (tables 6-4 and 6, 5).

Foreign exchange resources required are to be obtained by the import of capital goods while raw materials are available domestically. To meet these foreign exchange needs the Government is to promote exports and the inflow of funds from loans and foreign investment.

The role of Government and the private sector in development

Based on the principles of economic democracy as stipulated in the GBHN, there is a division of activities between the Government and the private sector. To promote economic growth the Government seeks to encourage the private sectors by the creation of an economic and investment climate favourable for business activities.

The role of the Government in this respect is:

1. to provide an investment climate, in the form of maintaining monetary stability, reducing or rationalizing the cost of production, and facilitating investment and business undertakings;

2. to provide direction and assistance to business undertakings, such as setting up investment priority scales, the promotion of sharing of ownership of companies, the regulation of fiscal and monetary policies, the improvement of institutional and regulatory matters, the promotion of labour intensive investments, the inducement of regional development by way of spreading investment;

3. to promote the role of indigenous weak economic groups to take part in economic activities by providing a series of programmes such as credits, participation funds, marketing assistance, vocational training, and the promotion of cooperatives.

The implementation of the development programme is guided by a basic policy of stability with growth within which inflationary effects are to be contained. This requires a series of policies involving, *inter alia,* the implementation of a balanced budget, selective credit policy, subsidy for essential needs and the formation of national stock.

Basic policy on foreign investment

Economic development is a process of transfering potential economic resources into real economic strength through capital investment and utilization of technology, the expansion of knowledge and efficiency, and the improvement of organizational and managerial ability. The efforts to develop the economic potential should be based on self reliance.

The Government recognises that the constraining factor is the scarcity of domestic capital which affects the existence of resource gap. This does not lead to a reluctance to use foreign capital when it benefits the national economy if it does not create a dependence on foreign countries.

Foreign investments should be utilized to maximum advantage to further accelerate development and their activities ought to be directed to economic sectors where domestic capital is still short. With this approach, it is expected that the role foreign investment is to play is a complementary one. Based on these policies the law on foreign investment and domestic investment were issued.[2] Both laws govern the status of foreign and domestic investments and the incentives to be granted. The objectives of these investment laws are to encourage investment activities. So far, these laws do not promote the development of the business world, especially the development of the weak economic group. For these, in every issue and implementation policies the Government keeps considering the negative impact which could hamper the development objectives in general.

The issuance of the investment laws has induced the national feeling of confidence and has brought the consequence of domestic activity in development efforts. The domestic investment activities have shown an increase comparable to those of foreign investments, in terms of the number of projects as well as the value of investment. The following table shows the development of foreign investments and the domestic investments approved by the Government from 1972 to

Foreign and Domestic Investment Approved by the Government *
1967 - 1977

	Number of project		Intended investment	
Year	Foreign	Domestic	Foreign (US$ million)	Domestic (Rp. million)
1967	20	—	162.8	—
1968	58	2	224.4	643
1969	70	185	645.7	53,559
1970	140	334	379.5	186,099
1971	98	390	391.7	275,683
1972	81	375	525.1	212,249
1973	121	616	665.7	599,656
1974	86	249	1,139.5	221,348
1975	41	173	1,934.1	252,507
1976	36	146	423.6	278,259
1977	29	309	433.8	511,574
TOTAL:	780	2,775	6,925.9	2,591,577

* Including the approved changes.
Source: BKPM.

It means that total amount of investments under the Domestic Investment Law (equivalent to US$6,243.7) within ten years is approaching the total amount of foreign investment.

The development of foreign investment and domestic investment shown in the table illustrates the sectoral growth as follows:

— agriculture	3%
— mining	5%
— communication	10%
— industry	12%
— construction	13%

[2] The Law No. 1 of 1967 and No. 6 of 1968.

The contribution of the agricultural sector to GDP has decreased from 52% in 1965 to 40% in 1973 and to 36% in 1977. While the industrial sector has increased from 8% in 1965 to 9% in 1973 and to 11% in 1977. To promote investment activities, the Government grants incentives for investment within the framework of foreign and domestic investments. The policy inducing investment activities based on the priority scale has been issued from time to time in such a way as to obtain the promotion of domestic investment and to realise the complementary role of foreign investments. These policies were realised by the issuance of the Investment Priority List. This list is issued annually and is the elaboration and specification of the priorities as set forth in the *Repelita* II.

The issuance of the Investment Priority List is aimed at keeping the balance among the foreign and domestic investment opportunities. The development of foreign investment activities creates with it the problem of balanced growth. In order to achieve balanced growth the Government is promoting the development of domestic investment specifically of weak economic group. This is part of the strategy for the trilogy of development.

The policy taken in this respect is:

a. *To increase the national participation in the ownership of companies*

In order to enlarge public participation in the development efforts, the mobilization of funds and forces should be undertaken, so that they have a firm role in the development programme. Special stress is paid to raise the role of the weak economic groups to play an adequate role in the national economic order as with that of foreign investment and of other economic groups. The assimilation of capital and of expertise is intended to fill the gap between the weak economic groups and the other groups. This policy is not aimed at discouraging the role of foreign investment. In this way the efforts of promoting the national participation in the economic activities accordingly is to strengthen the weak economic group to take part in the national economic order proportionately.

The development of the weak economic group is also undertaken by the Investment Coordinating Board (BKPM). Investment within the framework of the Domestic Investment Law should be open for participation of small scale enterprise, cooperatives, smallholders and other weak economic groups.

The policy promoting national participation in foreign investment was issued in 1974, which stated that every foreign investment must be in the form of a joint venture and that the share of the local partner at the initial investment should be at least 20% and within 10 years it should be increased to a majority (at least 51%).

The following are the criteria for obtaining national participation by way of majority sharing:

1. to increase the share of the local partner of the existing joint venture;
2. to allow other local partners to join in the ownership of companies;

3. to open the participation of the non-bank financial institutions with the provision that the ownership will not exceed 25% and limited for 5 years, after which, the shares must be transferred to other local partners;
4. the participation through the capital market;
5. other participation systems which will be considered by the Government.

b. *Indonesianisation of manpower and the transfer of technology*

Indonesia has an abundance of manpower which is potentially required for development purposes. The expertise and the technical know-how is a pre-requisite for development together with the increase of manpower productivity.

In order to maximise the utilisation of manpower the Government seeks to ensure that all development efforts including investment should be geared to a policy of labour-intensive production. This is to achieve fuller employment and a broader public participation in development. To this end, Government policy in investment stresses technologically labour-intensive investment rather than capital-intensive investment.

Owing to the lack of expertise and technical know-how, the Government imposed its policy on domestic as well as foreign investment to assign expatriates, though with conditions such as that:

1. certain professions are completely closed to foreign experts when local skills are available;
2. certain professions are open temporarily for foreign experts, while Indonesian personnel should be trained to make the substitution.

In considering work permits for foreign experts, the Government requires the foreign investor to recruit Indonesian personnel. Every foreign investor is obliged to undertake regular training and educational programmes and to set up a schedule for the replacement of foreign personnel.

This policy should be intensified so that the Indonesian personnel will be able to manage the investment and development programme. The increasing know-how is not to be limited to management but also to technical matters and to further develop such expertise. Such a policy, requires time and a series of programmes.

c. *Fostering investment in regions outside Java*

One of the objects of the development policy is to encourage development in regions outside Java. For the concentration of investments in only one or two areas will create economic, social and political distortion. It will hamper the efforts of the Government to maintain national stability. The Government is thus reviewing all applications which have the effect of fostering development in regions outside Java.

The Government realises the difficulties in directing foreign investment due to the fact that every investment has its own orientation. Investment in the field of industries producing consumer products or import substitution will be oriented to the availability of a ready market. It depends on the population as consumers, as well as the availability of high skills, manpower and infrastructure.

The Government tries to encourage private investment in the exploitation of natural resources and to develop the agricultural sector outside Java. Since the infrastructure is still lacking, additional investment is required to develop investment projects. To encourage such investment, the Government provides more incentives.

The development of industrial estates and bonded areas in several regions are among the devices used. Through the provision of better industrial locations and available infrastructure, it is hoped that this policy will effect further regional development. This approach will of course develop to accommodate also the export oriented industries.

The spreading of investment into regions is interrelated with the spreading of population from the densely populated area into the scarcely populated ones. The trans-migration programme as part of the Government development priority, however, is to be promoted within the policy of spreading economic activity in the regions. An integrated approach between the trans-migration programme, the raising of employment and the spreading of economic activities in the region will multiply the development goals.

d. *Restriction on the foreign and domestic investment activities*

As mentioned before, the role of foreign investment is complementary to national investment. The Investment Priority List has elaborated the restriction provisions on foreign investment activities based on the Foreign Investment Law No. 1 of 1967.

The restriction provisions are aimed at giving investment privileges to domestic investment. Foreign investment is of course welcomed but it must be directed to activities that are still highly needed, and to activities which the domestic investor is unable to undertake, owing to the high technical know-how and the amount of capital that is required.

The direction is expressed in the form of the selection of incentives to be granted to foreign investment. These restrictions and selection approaches describe the investment opportunity to foreign investors and the promotion of domestic investors at once. Fields open to foreign investment stated qualitatively are as follows:

1. Exploitation and processing of natural resources and raw materials into processed and finished products.
2. Production of machinery, equipment and manufacturing which require intensive technology and capital.
3. Production of export products especially with guaranteed markets.
4. Other fields which involve certain risks that the domestic investors are unable to afford.

These policies are elaborated in detail in the Investment Priority List issued by the Investment Coordinating Board, which is based on the Second Five Year Development Plan (*Repelita* II).

The Second Five Year Plan sets the priority objectives of economic development priorities. They are:

(1) increasing production;

(2) creation of new and greater number of job opportunities;

(3) spreading of development efforts throughout the country;

(4) encouragement of participation of the people in development efforts;

(5) equal distribution of income.

Certain Government policies are formulated to encourage business activities in general and capital investment in particular, namely:

(1) increasing exports of certain or all products of investment projects without neglecting domestic requirements;

(2) saving foreign exchange by reducing imports or producing substitutes for imported goods;

(3) utilizing local raw materials and products;

(4) increasing the value added;

(5) augmenting economic and social effects of capital investments so that they can yield more benefits;

(6) absorbing new technology know-how through the transfer of technological and managerial skills to Indonesians;

(7) yielding new or scarce types of products, particularly capital goods or industrial raw materials;

(8) protecting the economically weak groups and assisting them in promoting their activities;

(9) protecting national companies — particularly those receiving no facilities — against competition from investors possessing greater capital and technological capabilities;

(10) protecting investment projects, which have passed the period in which facilities are provided, against possible competition from new ones in the same field of activity who are still enjoying incentives;

(11) measures for environmental conservation are a prerequisite for certain types of activities to avoid the disturbances in the environment and ecological balance;

(12) capital and operation risks: operations requiring huge financing with high risks which national capabilities still lack are a priority for foreign investments;

(13) local equity participation in accordance with the priorities of the Second Five-year Development Plan;

(14) saturated capacity represents a consideration in directing and creating an efficient business climate.

The Investment Priority List issued regularly by the Investment Coordinating Board (BKPM) specifies economic activities which are open and restricted to foreign and domestic investments based on the abovementioned considerations. Four categories of investment activities are set forth in the Investment Priority List, namely, the priority sectors of the economy, less priority sectors, non-preferred sectors and closed sectors to the investment. The priority list will be reviewed annually, taking into account the development of foreign and domestic investments and the increasing ability of capital and know-how on the domestic sector. In this case the direction and selection of the incoming foreign investment will be based on the more sophisticated projects required in the development process.

The policies to promote local domestic investors have been issued in several fields. For example, the granting of the right to forestry exploitation to the local partner instead of to the joint venture company. With this policy approach the bargaining power of the local partner in a joint venture can be raised. The foreign investor is directed to exploitation and manufacturing the products. A similar policy is also promoted in the field of trade.

As set forth in Law No. 6 of 1968 concerning domestic capital investment, the foreign role in trade activity in Indonesia should be replaced by the national. The Government eliminated the foreign investment in trade business as of 1 January 1978. Foreign trading companies are obliged to transfer their activities in the sectors of production, based on the prevailing laws and regulations.

Provisions on the aspect of trade still apply to joint enterprises under Law No. 1 of 1967, stipulating that the enterprises may undertake the import and purchase domestically of capital goods and raw materials or supplies for use in their own production or operation purposes and that they may undertake the export of their own products. As for the distribution of their products in the domestic market, such is still exclusively permitted only through national enterprises.

e. *The problems of possible dependence on foreign investment*

There are some feelings that the enactment of foreign investment law has created national dependency on foreign investment. The foreign investment progress in Indonesia during the last 10 years has supported part of this fact. In the investment field, some efforts have been made to avoid the effects of dependency on foreign investment.

1. To increase the capability of the domestic capital and enterpreneurship. Many investment activities can be undertaken by domestic investment and competing with foreign investment. The Government policy to assist and give direction has resulted in strengthening domestic investment.

2. National participation in the ownership and management of joint enterprise will be encouraged.

3. Defining the field of activities open to foreign investment more selectively with consideration of the real national capability to undertake business without jeopardizing the continuance of national development.

4. Speeding up the development of basic industry and industry processing natural resources to industrial raw materials to minimize the dependency of domestic industry on imported capital goods and raw materials.

5. Foreign investment should, to the maximum extent possible, give preference to the use of services rendered by Indonesian nationals and to the use of capital goods, raw materials and supplies produced in Indonesia.

6. Transfer of technology as a part of the beneficial package of foreign investment should be directed to enhance national capability to invest technology suitable for national development.

7. Diversification of foreign investment sources is also considered so that the dependency on limited foreign investment sources can be avoided.

The above approaches are part of the Government policy in which the national private sector is expected to respond in expanding the role in national development. It is recognised that the role of foreign investment has fruitful effects to the national economy. To meet the development objectives, the Government is obliged to take any step to eliminate the negative effects of the foreign investment.

Incentives for foreign investment

The existing investment laws and regulations emphasise a positive policy for the encouragement of investment in Indonesia. These provide a number of incentives, which are mainly based on fiscal policy.

Incentives for investments have the following general functions:

(1) as a subsidy granted to enterprises for initial period of their operation in the field of activity desired by the Government;

(2) directing investment activities to the national development objectives;

(3) as an encouragement to enterprises and investors who participate actively in national development.

Some considerations should be made in defining incentives for investments to meet the above functions:

(1) National development policy, medium as well as long term.

(2) The availability of production factors in national or regional level to support economic development.

(3) The availability of economic, social and political stabilities to secure the continuance of national economic development.

(4) The prevailing tax policy.

(5) The level of development progress in achieving the national development objectives.

Based on the above considerations it is clear that it will be difficult to compare the incentives for investment in different countries to conclude which are more generous and which, less generous.

In granting incentives for investments the Government pays attention to the various stages of investment activities. This approach is expected to meet the function of incentives granted to enterprises. Four stages have been selected in the preparation of a company establishment — the period of construction, the period of operation or production and the period of development. Incentives for investments will differ from stage to stage of investment activities.

(1) In the preparation period of the company, the incentives may be granted by:

(a) exemption of capital stamp duty payable on equity capital;

(b) exemption from previous taxes and investigations for domestic investors participating in a joint enterprise.

(2) In the construction period of the project, the incentives may be granted as a form of exemption or reduction of import duties and sales tax for capital goods.

(3) In the operation or production period:

(a) exemption or reduction of import duties and sales tax for raw materials and supplies for first 2 years of the operation;

(b) tax holiday or investment allowance, depending on the scale of priority of the investment;

(c) provision of accelerated rate of depreciation of fixed assets;

(d) provision of carry forward of losses;

(e) exemption of dividend taxes.

(4) In the development period of the company for the expansion of production capacity, the incentives may be granted by way of:

(a) exemption of capital stamp duty payable on additional equity capital required;

(b) exemption from previous taxes and investigations for domestic investors participating in expanding equity capital of joint enterprise;

(c) exemption or reduction of import duties and sales tax for additional capital goods;

(d) investment allowance;

(e) exemption of dividend taxes;

(f) provision of accelerated rate of depreciation;

(g) provision of carry forward of losses.

The above incentives for investments in the framework of Law No. 1 of 1967 on foreign investment as it has been amended by Law No. 11 of 1970 can be further specified.

Tax holiday. This incentive is available for new enterprises in priority sectors of the economy. Priority sectors of the economy open for foreign capital investment and domestic capital investment set forth in the category of "Priority" in the Investment Priority List (DSP) issued annually by the Government.

The basic tax holiday period is two years, starting from the commercial production of the enterprise. The tax exemption period of 2 years can be extended up to 6 years, provided that certain conditions are met. Such extension will cover an additional 1 year tax exemption for each condition:

— if the investment contributes to a significant increase or saving of foreign exchange;

— if the investment is located outside Java to promote regional distribution of the development;

— if the project requires the investors to make a large investment in infrastructure and/or involves other extraordinary risks;

— if the investment coincides with other special priority objectives of the Government.

Investment allowance. This incentive is available for new enterprises in lower priority sectors of economy categorized as "Facility" in DSP and available for existing enterprises expanding their investment in a priority or lower priority sectors of economy. This allowance, which is a premium for the investors, aggregates 20% of the sum of capital invested to be spread evenly over 4 years, beginning with the year in which the investment is made.

Accelerated depreciation of fixed assets. Beside the normal rate of depreciation according to the existing rules, the enterprises are allowed to apply an accelerated rate of depreciation, at the option of the enterprises within a period of 4 years, beginning with the year in which the investment is made.

Carry forward of losses. Any loss incurred may be carried forward for 4 successive years. If the loss incurred during the first 6 years after the establishment of the enterprise, the loss may be carried forward indefinitely until it can be fully set-off against income.

Dividend tax. Dividend tax may be exempted for a period equal to the period of corporate tax exemption or for 2 years in the case of investment allowance.

Capital stamp duty. Exemption of capital stamp duty payable on equity capital.

Other tax incentives. An additional incentive is given to domestic capital investors in the framework of domestic as well as foreign capital investment, in which the capital invested is unquestionable and hence free from previous taxes and investigations by tax office. This incentive is given with regard to the fund originating from illegal income and windfall profits made during the period of inflation.

Import incentives. For the setting-up and the operation of investment project in priority and lower priority sectors of economy, the importation of capital goods for the requirement of initial operation and raw materials or supplies to be processed for the first 2 years of the operation may be granted exemption or reduction of import duties and sales tax, provided that such goods have not yet been manufactured or produced domestically and are not used, rebuilt or re-conditioned goods.

Importation of personal effects, clothes, foodstuffs and other consumer goods up to the value of US$50 (FOB) per person or US$100 (FOB) per family per month for the purpose of foreign experts assigned to foreign enterprises approved by the Government may be exempted from import duties sales tax.

Transfer of foreign exchange. The enterprises shall be granted the right to transfer abroad in the original currency of the invested capital at the prevailing rate of exchange at such time for:

— net operating profits in proportion to shareholding of the foreign participant;

— proceeds of the sale of shares by the foreign participant to the Indonesian participant or other Indonesian nationals;

— expenses for foreign personnel assigned to the enterprises and for Indonesian personnel training abroad;

— repayment of principal and interests on foreign loans, provided that such foreign loans shall obtain prior approval of the Government as a finance resource for the capital investment;

— allowances for depreciation of capital goods imported in accordance with the foreign investment import scheme;

— Government compensation received by the enterprises in case of nationalization;

— royalties or technical fees to an amount and period of payment under the prior approval of the Government;

— repatriation of remaining invested capital of the foreign participant at the time of total liquidation of his interest in the enterprise, provided that such repatriation shall not take place prior to the expiry of the period of tax holiday or investment allowance.

International protection agreements. With the aim to encourage and to protect the investment of foreign nationals, legal persons or companies in Indonesia, the Government concluded Investment Guarantee Agreements with the Governments of foreign countries and ratified Indonesia's adherence to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

To put into effect the implementation of the complementary functions of foreign investment substituting the unavailability of domestic investment, the treatment extended within the scope of Domestic Investment Law will be more favourable than the treatment extended within the scope of the Foreign Investment Law. Different treatment will consist of the selection of fields of activities open for foreign and domestic investments, different incentives granted to similar process and stage of production undertaken by foreign and domestic investments, selective market orientation and project location, minimum requirement of the capital invested and the availability of local bank loan to finance the intended investment approved by the Government. The derogation of equal treatment which shall be principally rendered to foreign investment and domestic investment as set forth in the Investment Guarantee Agreement, is put in a Protocol, as an integrated part of the Agreement.

The Government undertakes not to expropriate or nationalize any enterprise, nor revoke its ownership rights or reduce its right of control in management, except in cases as might be required by public interest, which has to be determined by an Act of Parliament. In the case of expropriation or nationalization, compensation will be provided in accordance with the principles of International Law.

Institution improvement

Simplification of the systems and procedure of capital investment constitute an encouragement for the flow of capital investment required for national development. As a consequence of promoting private capital investments in Indonesia, the Government commits itself to seek for better ways and means of handling all problems arising from the implementation of such investments, which are multiple and growing from day to day. Considerable efforts of the Government in this case appear since 1973, when the Investment Coordinating Board (abbreviated in Indonesian to BKPM) once established in 1973 to replace the Technical Committee on Capital Investment.

To secure the realization of such simplification, greater authority is required by the BKPM to handle all aspects of investment to meet the idea of the centralization of all activities of Government investment administration and of the processing of applications and grant of permits. Two decrees were signed by the President of the Republic of Indonesia on 3 October 1977 to restructure the existing BKPM and to simplify the systems and procedures of private capital investment under Law No. 1 of 1967 and Law No. 6 of 1968, concerning Foreign and Domestic Capital Investments.

The following new functions carried out by the BKPM under new decrees are:

(1) to issue an investment priority list at regular periods;

(2) to formulate investment policy subject to the approval of the President;

(3) to appraise or evaluate investment applications, either foreign or domestic;

(4) to seek for the approval of the President on foreign investment applications;

(5) to approve on behalf of the Government domestic investment applications;

(6) to issue on behalf of the Minister concerned with the implementation of investment approved by the Government, permits and licences consisting of:

(a) provisional and permanent operating permits;

(b) raw material use permits;

(c) limited import licences;

(d) limited export licences;

(e) limited domestic purchase permits;

(f) limited domestic trade permits for domestic investments;

(g) working permits for foreign nationals;

(h) right of exploitation of land;

(i) decision on granting tax incentives;

(j) decision on granting import duty incentives.

(7) to control and execute the guidance on the implementation of capital investment;

(8) to stimulate the activities of capital investment in the regions.

The Provincial Investment Coordinating Board (BKPMD) will assist BKMP in *inter alia,* the evaluation of investment projects, the exercise, control and supervision of investment projects.

With this new system and procedures, investors need only communicate BKPM as a single Government authority to file with and finalise investment application and to solve all problems concerning capital investment. Investors are no longer obliged to arrange contacts with different departments and Government agencies, as has been in fact the practice before.

By restructuring the BKPM and delegating authority to appraise the investment application and to issue permits necessary for the implementation of approved investment projects, the Government believes that the investors will find the whole procedure of investment application to be a much more efficient and less time-consuming process, and that the longer it takes for the Government to approve investments, the longer it takes to proceed with Indonesia's development.

AMIEN WARSITA *

* Chief, Project Appraisal Bureau, Investment Coordinating Board, Indonesia.