

POLICY BRIEF (APRIL 2021)**INDONESIA INVESTMENT AUTHORITY: INDONESIA'S LONG TERM INVESTMENT
MANAGER TO SUPPORT SUSTAINABLE DEVELOPMENT****1. Background**

Law No. 11 of 2020 on Job Creation ("**Job Creation Act**") presents amendments and new laws regarding various business and investment-related topics/issues. Amongst them are the establishment of an institution to manage Indonesia's long-term investment,¹ dubbed the Indonesia Investment Authority (*Lembaga Pengelola Investasi*—"INA"). As stated under the annotations of Government Regulation No. 74 of 2020 on Indonesia Investment Authority ("**GR No. 74/2020**"), INA is a *sui generis* institution, an independent institution separate from the government which is established by an act of parliament (in this matter, Job Creation Act) and privileged to bear authorities previously held by the government.² GR No. 74/2020 itself is one amongst many implementing regulations of the Job Creation Act.³

Accordingly, this policy brief will have a concise discussion on the authorities and the organizational structure of INA, along with other necessary key issues.

Summary of Key Aspects

No.	Stipulations	Regulations
1.	INA's Status and Source of Capital (Article 2-4 GR No. 74/2020)	INA is a state owned enterprise with their source of capital originating from, principally but not limited to, state funds (<i>penyertaan modal negara</i>).
2.	INA's Authorities (Article 7 GR No. 74/2020)	<ol style="list-style-type: none">1. Deposit funds in financial instruments;2. Carry out asset management activities;3. Cooperate with other parties, including trust fund entities;4. Determine potential investment partners;5. Provide and receive loans; and/or6. Administer INA's assets.

¹ Article 165 Paragraph (1) Job Creation Act.

² Directorate General of State's Wealth, "BUMN, BLU, PTNBH, dan Lembaga Sui Generis" <https://bit.ly/3uD33B3> Accessed on April 8, 2021.

³ Article 171 Paragraph (3) of the Job Creation Act stipulates that the further regulation on the establishment and the management of INA will be regulated by GR No. 74/2020.

3.	INA's Organizational Structure <i>(Article 9-36 GR No. 74/2020)</i>	<ol style="list-style-type: none"> 1. Supervisory Board The Supervisory Board is essentially responsible for the supervisions on INA's operation, ultimately implemented by the Board of Directors. 2. Board of Directors The Board of Directors is responsible for carrying out INA's management. 3. Advisory Board The Advisory Board is formed only if needed in order to give advisory in regard to investment to the Board of Directors.
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2. Status and Source of Capital (Article 2-4 GR No. 74/2020)

INA is an Indonesian legal entity that is fully owned by the Indonesian government and is therefore classified as a state-owned enterprise (*Badan Usaha Milik Negara*—“**SOE**”). The INA is directly responsible to the president.

INA's source of capital originates from, principally but not limited to, state funds (*penyertaan modal negara*). Said capital is set at a base value of Rp75,000,000,000.000,- though GR No. 74/2020 does not limit said figure in the event capital subscription takes place (**Article 3 GR No. 74/2020**). Furthermore, it would be worthy of note that stipulations regarding state capital subscription that applies to Indonesian SOEs apply exactly the same for the INA (**Article 64 GR No. 74/2020**). Therefore, pursuant to Article 2 of Government Regulation No. 44 of 2005 on the Procedures of the Inclusion and Administration of the State's Capital in SOEs and Limited Liability Companies as amended by the Government Regulation No. 72 of 2016 (“**GR No. 44/2005**”), INA can also obtain capital from the following sources:

- a. State's budget (*Anggaran Pendapatan dan Belanja Negara*—“**APBN**”):
 - Fresh funds;
 - Projects funded by APBN;
 - State-owned receivables from BUMNs or limited liability companies; and/or
 - Other state-owned assets.
- b. Reserve Capitalization; and/or
- c. Other sources:
 - Asset revaluation benefits; and/or
 - Additional paid-up capital (*agio saham*).

3. Powers and Authorities (Article 7 GR No. 74 of 2020)

In order to achieve its objectives, GR No. 74/2020 delegates several authorities previously held by the government to the INA. The INA may:

1. Deposit funds in financial instruments;
2. Carry out asset management activities;

3. Cooperate with other parties, including trust fund entities;
4. Determine potential investment partners;
5. Provide and receive loans; and/or
6. Administer INA's assets.

4. **Organizational Structure**

The INA, as a *sui generis* institution, is also prescribed a unique and different organizational structure slightly modified from a typical SOE. The INA is composed of a supervisory board, a board of directors, and an advisory board:

a. Supervisory Board (Article 9-25 GR No. 74 of 2020)

The Supervisory Board consists of the Minister of Finance as the head and a member of the board. Aside from the Minister of Finance, the SOE Minister and 3 (three) other persons coming from professional elements that also act as members of the board. In performing their duties, the Supervisory Board will be assisted by the secretariat and committee. The Supervisory Board is essentially responsible for the supervision of INA's operation, ultimately implemented by the Board of Directors.

b. Board of Directors (Article 26-35 GR No. 74 of 2020)

The Board of Directors consists of 5 (five) people, who are selected from professional elements. Accordingly, all of them are appointed and dismissed by the Supervisory Board, and are responsible for carrying out INA's management. In conducting said responsibility, the Board of Directors is assisted by an Investment Committee and a Risk Management Committee.

c. Advisory Board (Article 36 GR No. 74 of 2020)

The Advisory Board is formed only if needed in order to give advisory in regard to investment to the Board of Directors. If so needed, the Advisory Board is appointed and dismissed by the Supervisory Board.

5. **Asset, Loan, and Management (Article 37-54 jo. Article 72 GR No. 7 of 2020)**

INA assets may originate from:

- a. Capital;
- b. The results of INA's development of assets and investments;
- c. The transfer of assets belonging to the state or other SOEs;
- d. Grants; and/or
- e. Other legitimate sources.

In order to increase their asset value, INA may cooperate with third parties, which can be carried out by:

- a. the transfer or the receipt of management rights to or from third parties;
- b. formation of joint venture companies; or
- c. other forms of cooperation.

Aside from the aforementioned cooperation, INA may provide or receive loans provided on the basis of risk analysis. These loans can be in the form of:

- a. credit facilities;
- b. debentures; or
- c. other loan instruments.

INA may also:

- a. appoint an investment manager tasked with managing INA's investments; and
- b. form an Investment Fund (*Dana Kelolaan Investasi*–“**Fund**”), or participate in a Fund established by a third party, which may be in the form of:
 - (i) Joint venture companies;
 - (ii) Mutual funds;
 - (iii) Collective investment contracts; and/or
 - (iv) Other forms.

The implementation of third-party cooperation, such as the provision and receipt of loans, mutual funds, and joint ventures, among others, shall follow guidelines formed by the Board of Directors.

All profits produced by the INA would be kept in reserve, utilized for mandatory reserve funds and/or profit-sharing with the Indonesian Government. In the event the INA suffers losses and said losses exceed the tolerance limit set by the Board of Directors and the Supervisory Board, then the Board of Directors must have a further discussion with the Supervisory Board to overcome the losses. If the INA's accumulated losses cause the INA's capital value at 50% of the initial capital (Rp75,000,000,000.000,-), the government may provide additional capital subscription to the INA. The INA may be declared bankrupt and accordingly liquidized in the event a court discovers that INA has become insolvent.

6. Conclusions

Based on the discussion above, we may conclude that INA is the Indonesian government's answer to the constant push for greater, well-managed investment of state funds and properties. Under the aforementioned regulation, the INA is ultimately designed as a *sui generis* institution run by state officials and experts from the professional world to make the best out of the state's funds.

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