



WPG INDONESIA:

A NEW BEGINNING? – INDONESIA ISSUES A NEW INVESTMENT LIST

By WongPartnership and Makes & Partners,
member firms of WPG, a regional law network.

A New Beginning? – Indonesia Issues a New Investment List

The Indonesian government has been working hard to attract more foreign investment by expanding investment opportunities for foreign investors. On 2 February 2021, the Indonesian government issued new Presidential Regulation (*Peraturan Presiden*) No. 10 of 2021 on Investment Business Fields (*Bidang Usaha Penanaman Modal*) ("**New Investment List**"), which aims to attract more foreign investors by reducing the number of restricted business sectors. This New Investment List is set to take effect on 4 March 2021 and will replace the current negative investment list (*Daftar Negative Investasi*) ("**Negative Investment List**"), as part of the reforms introduced under Law No. 11 of 2020 on Job Creation (*Cipta Kerja*) ("**Job Creation Law**") which is also widely known as the "Omnibus Law".

Under the New Investment List, all business fields are considered open to foreign investment, unless they are closed to investment (details set out below) or if they are activities that may only be conducted by the central government (such as, national security and defence). Although the New Investment List still imposes certain conditions on foreign investment into several business fields (such as maximum foreign shareholding ownership thresholds, requirements to partner with a local partner, reserving certain areas for cooperatives and micro, small, and medium-sized enterprises ("**Cooperatives or SMEs**"), and requirements for special licences or approvals from the relevant authority), the business fields which are subject to such conditions are significantly less extensive than those specified in the current Negative Investment List.

The New Investment List also states that foreign investors must carry out business activities in Indonesia through a foreign investment company (*penanaman modal asing*), which must have an investment value of over Rp. 10 billion, excluding the value of land and property. An investment value of Rp. 10 billion or less, excluding the value of land and property, is permitted for technology-based start-up companies in special economic zones.

Business Fields Closed to Investment

The New Investment List provides six business sectors that are closed for investment to both domestic and foreign investors. These are:

- (a) Class-I narcotics and cultivation;
- (b) All forms of gambling activities;
- (c) Fishing of endangered species;
- (d) Utilisation of corals found in nature for the production of jewellery, souvenirs, building materials, etc.;
- (e) Chemical weapons production; and
- (f) Industrial ozone-depleting substances industries and industrial chemicals.

Business Fields Open to Investment

The New Investment List classifies business fields which are open to investment into the following four categories:

- (a) Priority business fields;
- (b) Business fields that are for, or require partnerships with, Cooperatives or SMEs;
- (c) Business fields that are subject to specific conditions; and
- (d) Business fields that do not fall under the categories mentioned above (these are open to all investors without restrictions).

Priority business fields

Priority business fields are business fields which satisfy any of the following criteria:

- (a) part of strategic national projects/programs;
- (b) capital intensive;
- (c) labour intensive;
- (d) utilise advanced technologies;
- (e) pioneering industry;
- (f) export-oriented; and/or
- (g) oriented towards research and development, and other innovative activities.

The New Investment List provides that businesses investing in priority business fields will be eligible to receive fiscal incentives, such as tax allowances and holidays, investment allowances, import duty exemptions, and/or other non-fiscal incentives in the form of ease of attaining business licenses, work permits, and supporting infrastructure.

The list of priority business fields is set out in appendix 1 of the New Investment List.

Business fields that are for, or require partnerships with, Cooperatives or SMEs

Under the New Investment List, business fields which satisfy the following criteria are reserved for Cooperatives or SMEs:

- (a) do not utilise advanced technologies, such as construction of wastewater treatment, distribution and storage structures with small and medium risks;
- (b) labour-intensive and which have a special cultural heritage significance, such as woven fabric industries; and

- (c) capital requirements of the business must not exceed Rp. 10 billion, excluding land and property, as in the case, for instance, of a power plant having a capacity of less than 1 MW.

The New Investment List requires large-scale companies to enter into mandatory partnerships with Cooperatives or SMEs for business fields which satisfy the following criteria:

- (a) traditionally occupied by Cooperatives or SMEs, such as courier agent activities; and
- (b) have the potential to scale up to enter the larger supply chain, such as repair services for ships, boats and floating buildings.

Such mandatory partnerships between large-scale companies and Cooperatives or SMEs may be in the form of human resources training, market growth endorsements, assisting in the access of financing, or enhancing the competitiveness of the Cooperatives or SMEs.

The list of business fields that are for, or require partnerships with, Cooperatives or SMEs is set out in appendix 2 of the New Investment List.

Business fields subject to specific conditions

The New Investment List opens business fields under this category to all investors, but investments in such business fields may be subject to one or more conditions such as:

- (a) contribution of initial investment capital by domestic investors;
- (b) specified maximum investment capital contributions by foreign investors which will not apply if:
 - (i) the investment is made through the Indonesian stock exchange;
 - (ii) the investment is made in a special economic zone;
 - (iii) investors have been granted special rights under agreements between their countries and Indonesia; and/or
 - (iv) the investment was made before the enactment of the New Investment List; and
- (c) investments that require special licenses and/or approval from the relevant authority.

The list of business fields which are subject to specific conditions is set out in appendix 3 of the New Investment List.

Business fields which do not fall under any of the specified categories

The New Investment List specifically states that business fields which do not fall into any of the specified categories are open to all investors without restrictions. There are several significant business fields in respect of which foreign investment was restricted, but which are now, under the New Investment List, open for investment without any restriction. These include the following:

Business Activities	Former Negative Investment List (2016)	New Investment List (2021)
Trade Sector		
General Distributorship Activities (applicable for all wholesale trade activities)	<u>Distribution with no affiliation to production</u> Open for up to 67% foreign investment	Open for 100% foreign investment
	<u>Distribution with affiliation to production</u> Open for 100% foreign investment	
Retail Trade of Various Kinds of Goods, Mainly Not Foods, Beverages, and Tobacco (Department Store) (KBLI 47191)	<u>With the total floor area of 400m² – 2,000m²:</u> 1. Open for up to 67% foreign investment 2. Located at the mall and not a stand-alone store	Open for 100% foreign investment
Online Retailer (KBLI 47911, 47912, 47913, 47914)	Requires partnership with Cooperatives or SMEs	Open for 100% foreign investment
Real Estate Sector		
Fee or Contract Basis Real Estate (KBLI 68200)	Prohibited for foreign investment (100% domestic investment)	Open for 100% foreign investment
Technology and Telecommunication Sector		
Web Portal and/or Digital Platform for Commercial Purposes (KBLI 63122)	Open for up to 100% foreign investment if the investment amount is equal to or more than Rp. 100,000,000,000 (one hundred billion Rupiah); for smaller investment	Open for 100% foreign investment

	amounts, this business activity is open for up to 49% foreign investment	
Internet Service Provider (KBLI 61921)	Open for up to 67% foreign investment	Open for 100% foreign investment
Satellite Telecommunication Activities (KBLI 61300)	<u>General provision</u> Open for up to 100% foreign investment	Open for 100% foreign investment
	<u>Specifically for Mobile Telecommunication Network Activities</u> Open for up to 67% foreign investment	
	<u>Specifically for Management and Implementation of the Radio Frequency Spectrum and Satellite Orbit Monitoring Station Activities</u> Prohibited for foreign investment (100% domestic investment)	
Cable Telecommunication Activities (KBLI 61100)	<u>General provision</u> Open for up to 100% foreign investment	Open for 100% foreign investment
	<u>Specifically for Fixed Telecommunication Network Activities</u> Open for up to 67% foreign investment	
Central Telecommunication Construction 2017: KBLI 42217 2021: KBLI 42206	Prohibited for foreign investment (100% domestic investment)	<u>General provision</u> Open for 100% foreign investment
		<u>Specifically for Central Telecommunication Construction with Simple and/or Moderate Technology</u> Reserved for Cooperatives or SMEs only

Healthcare Sector		
Wholesale Trade of Laboratory, Pharmacy, and Medical Equipment 2017: KBLI 46693 2021: KBLI 46691	Open for up to 49% foreign investment	Open for 100% foreign investment
Agriculture Sector		
Free Range Chicken Breeding and Livestock Activities 2017: KBLI 01463 2021: KBLI 01463 and 01464	Reserved for Cooperatives or SMEs only	Open for 100% foreign investment
Crude Palm Oil Industry (KBLI 10431)	Reserved for Cooperatives or SMEs only	Open for 100% foreign investment
Crude Palm Kernel Oil Industry (KBLI 10432)	Open for up to 95% foreign investment	Open for 100% foreign investment
Palm Plantation (KBLI 10262)	Open for up to 95% foreign investment	Open for 100% foreign investment

Notwithstanding the matters set out above, it is advisable to check the relevant implementing regulations that may be issued by the relevant ministry for each business sector to understand if there are any additional requirements imposed on each such business sector. The Indonesian government is expected to issue implementing regulations as a follow up to the enactment of the Job Creation Law.

Recent Developments

Since its publication, the New Investment List has provoked a lot of feedback from various stakeholders within Indonesia. On 2 March 2021, following widespread criticism from certain groups, President Jokowi announced that he would be revoking the relaxation of the ban on foreign investment in businesses involved in the manufacturing of alcoholic drinks, which is set out in the New Investment List.

Conclusion

The issuance of the highly anticipated New Investment List is a positive step forward for Indonesia's economy and will be welcomed by the investment and business communities both within and outside of Indonesia. With the relaxation of foreign ownership restrictions in many business fields, investment

structures will be simplified and investors will be able to focus on bringing greater value to the Indonesian economy.

The issuance of the New Investment List will not be the end of Indonesia's economic reform. It is expected that more government regulations and presidential decrees or regulations will be passed following the enactment of the Job Creation Law, which will be key in ensuring that the Job Creation Law is implemented effectively and achieves its intended purpose. However, we expect that there will be resistance from certain stakeholders on these new government regulations and presidential decrees or regulations, which could affect the effectiveness of the Job Creation Law.

If you would like information on this or any other area of law, you may wish to contact the Partner at WongPartnership or Makes whom you normally work with or the following:



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AWARDS

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