

INDONESIA'S 'POSITIVE INVESTMENT LIST'

For decades before 2020, Indonesia had relied upon the 'Negative Investment List' setting out a long laundry list on the restrictions and requirements to invest in Indonesia. For example, the 'Negative Investment List' set out maximum foreign ownership shareholding requirements for lines of business restricted to be wholly owned by foreign investors. The latest 'Negative Investment List' used was set under Presidential Regulation No. 44 of 2016. The use of the Negative List and other issues affect the investment climate in Indonesia as according to the 2020 Ease of Doing Business Ranking published by the World Bank, Indonesia ranked 73 out of 190 world economies surveyed (despite current controversies surrounding the preparation and survey of the Doing Business Report by the World Bank).

In 2020, improvements were made to create a more investor-friendly climate. Two of the most notable actions made by the Government in 2020 are the offer of numerous new Government or infrastructure-related investment opportunities and the enactment of Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"). The Job Creation Law is an umbrella regulation landmark of the economy and bureaucratic reforms as clearly it helps boost the investment and attract new investors. In addition, the Job Creation Law simplifies the complications and requirements under the Indonesian regulations.

As the implementation of Law No. 11 of 2020 on Job Creation ("**Job Creation Law**"), the Government finally issued Presidential Regulation No. 10 of 2021 on Investment Business Fields ("**PR 10/2021**") on 2 February 2021, which came into effect 30 days after its issuance date. PR 10/2021 fundamentally changed the previous 'Negative Investment List' to become the 'Positive Investment List' and the new guidelines on the foreign investment requirements.

Please see below the highlights of the newly introduced 'Positive Investment List'.

Lines of Business that are closed to investment

The followings are the line of businesses that are closed to investment:

- a. cultivation and trading of class I narcotics;
- b. all forms of gambling and/or casino activities;
- c. fishery of species listed in Appendix I to the Convention on International Trading in Endangered Species of Wild Fauna and Flora (CITES);
- d. utilization or taking of corals and reefs from nature to be used as building materials/lime/calcium, in aquariums, or for souvenirs/jewelry, and the use and taking of live corals or dead corals (recent dead coral) from nature;

- e. chemical weapons manufacturing industry; and
- f. chemicals industry and industry of materials that can be harmful to the ozone layer.

Lines of Business that are open to investment

There are four types of line of businesses that are open for investment, namely:

A. Priority lines of business

The followings are the criteria for the priority lines of business:

- a. national strategic programs/projects;
- b. capital intensive industry;
- c. labor-intensive industry;
- d. industry that uses advanced technology;
- e. pioneer industry;
- f. export-oriented industry; and/or
- g. industry-oriented in the research, development and innovative activities.

Investors in prioritized business fields are eligible to receive fiscal incentives (i.e., tax allowances, tax holidays, investment allowances and import-duty exemptions) and/or non-fiscal incentives (i.e., ease of business licensing and other conveniences available under the prevailing laws and regulations). The priority lines of business are listed in Attachment I to PR 10/2021.

B. Lines of business reserved for or that require partnership with cooperatives and Small and Medium-Sized Enterprise (“UMKM”)

The lines of business that (i) do not use technology or use simple technology; (ii) involve specific processes, are labor-intensive, and have a unique cultural heritage and are hereditary; and/or (iii) with the capital of less than IDR10 billion (excluding the land and building value), are reserved for cooperatives and UMKMs. Large-scale businesses can enter into a partnership with the cooperatives and UMKMs if it satisfies the following criteria:

- a. the lines of business that are mostly carried out by cooperatives and UMKMs; and/or
- b. the lines of business that are encouraged to enter into the large-scale businesses supply chains.

The business lines reserved for or requiring partnership with cooperatives and UMKMs are listed in Attachment II to PR 10/2021.

C. Lines of Business fields that are open with certain requirements

The lines of business that are open with certain requirements are significantly reduced under PR 10/2021. Previously, around 350 lines of business under the 'Negative Investment List' were open with certain requirements. Under this 'Positive Investment List', now only 46 lines of business are open with certain requirements. The list is provided under Attachment III to PR 10/2021.

Minimum Capital Requirements for Foreign Investment

Under PR 10/2021, foreign investors may only engage in large-scale business activities with an investment value of more than IDR10 billion, excluding the value of the land and buildings. Following this, the Investment Coordinating Board (BKPM) then issued Regulation No. 4 of 2021, effective as of 2 July 2021, which now requires the minimum issued and paid-up capital of a foreign investment company to be more than IDR 10 billion (from previously IDR 2,5 billion).

Investment Acceleration Task Force

The Government also created the Investment Acceleration Task Force to boost the investment and ease of doing business which is directly responsible to the President of the Republic of Indonesia. The task force consists of the Head of the BKPM (as the chairman), Vice Attorney General and Vice Head of Police of the Republic of Indonesia. The main duties of the Task Force are to:

- a. ensure the implementation of the investment by the local and foreign investors that intends to invest and/or that has already obtained business license;
- b. immediately settle and debottleneck for business sectors that have the business licensing issues for the investment;
- c. accelerate businesses in the sectors that have the characteristic of rapidly increase the state income, create new jobs, and develop the regional/local economy;
- d. accelerate the cooperation between investors and UMKM; and
- e. recommend the administrative actions to the head of the minister/institution/authority and local governments in the provincial/regency/municipality level to the officials who hinder the investment or who cause the increase in the investment cost in Indonesia.

OSS Risk-Based Approach Licensing and New KBLI

Following the issuance of Omnibus Law and sets of new implementing regulations, the OSS-Risk-based approach is finally introduced by the BKPM and is already in operation.

On 24 September 2020, a new Indonesian Standard Business Classifications (*Klasifikasi Baku Lapangan Usaha Indonesia* – “KBLI”) 2020 finally issued to replace KBLI 2017. KBLI 2020 introduces new lines of business (for example, fintech industries, creative industries, etc.) and offers new integration with the OSS-RBA.

Although the system is now in operation, we still experience bugs here and there. Nevertheless, the system is being improved and upgraded over time and hopefully will be running without any major issue in the near future.

This advisory is not intended to serve as and should not be relied on as legal advice or as a substitute for legal advice in individual cases. If you have any questions or concerns about any of the above issues, please reach out to Yohanes Masengi at yohanes.masengi@lawghp.com to obtain specific advice.

Lawyers In Charge



Yohanes Masengi ***Partner***

Yohanes Masengi is a Partner with extensive experience in investment, infrastructure, power projects, ports, mergers and acquisitions, joint ventures, employment and corporate restructuring.

He has represented prominent companies in a variety of proceedings and transactions, including merger and acquisitions, land acquisitions, project financing, healthcare and life sciences, and natural resources and energy. These include, among others, representing independent power producers in the development of various large-scale power projects in Indonesia, representing the employer in the settlement of labor disputes and mass terminations due to redundancy and closure, representing a state owned enterprise in the arbitration disputes, providing legal assistance in the renegotiation of concessions and contracts with state owned enterprises, providing legal assistance in the acquisition of land with an area of more than 85 hectares for infrastructure projects, providing legal assistance in various joint ventures and the establishment of companies in Indonesia, and advising on various matters related to their concession and business activities.

He was nominated as the finalist of 2018 Indonesian Young Lawyer of the Year and ranked as the Indonesian Rising Star Lawyer of 2019 and 2020 by the Asian Legal Business. He is recognized by the ILFR 1000 review that he is "Detailed, practical and flexible in offering solutions as the landscape changes. Responsive to client's needs and concerns. Direct, succinct and clear advice without compromising details." He is also recognized by the Legal500 as the Next Generation Partner in the Projects and Energy with the review that "Yohanes Masengi also has significant experience in power projects and M&A."

He is also a contributor of the Energy Projects for Practitioners (ISBN: 978-4-502-31861-0) published by Atsumi Sakai Law Office / Foreign Law Joint Project and contributor to The Commercial Laws of Indonesia Chapter in Digest of the Commercial Laws of the World, Thomson Reuters, from 2017 to 2021.

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