February 2016 Focus

Revision of Indonesia's Negative Investment List

Background

On 11 February 2016, the Government released the tenth instalment of its economic stimulus programme. The programme includes new regulations that seek to streamline investment and business licence procedures, and weaken the hold of oligarchies and cartels that exist in certain sectors.

The focus of this tenth package is the revision of the Indonesian Negative Investment List of 2014 ("**2014 Negative List**"). When announcing the package, the Government provided an overview of the revisions to be made, although the new negative list regulation itself has not yet been released therefore some key details regarding the foreign ownership limitations remain to be clarified in the regulation itself. That said, we understand that it is intended that the new negative list regulation will be released very shortly.

The policy package has foreshadowed that under the new negative list regulation, certain business sectors which are currently closed or limited for foreign investment will be 100% open to foreign investment (with certain conditions). What should be reassuring to foreign investors is that the Government has, in its announcement, specifically emphasised on, and re-iterated its commitment to strengthen, the benefit of grandfathering protection. The concept of grandfathering of previously approved investment is not, strictly speaking, a new concept as it has also been implemented in previous negative list regulations. Therefore, it will be interesting to observe what strengthening of the grandfathering protection the Government is seeking to implement under the new negative list regulation.

What are the key changes?

1. **Liberalisation of selected capital and technology intensive businesses**: Certain business sectors currently in the 2014 Negative List are being taken out from the negative list regulation, including crumb rubber, tourism, film industry including film distribution, e-commerce (marketplace) with a minimum invested capital of Rp100 billion, telecommunication equipment testing (laboratory test), toll road operator, manufacturing of raw pharmaceutical materials. All of these business sectors should be 100% open to foreign investment under the new negative list regulation. In previous drafts of the new negative list, 100% foreign ownership of a distribution company which is affiliated with a manufacturing company was permitted, however this was not expressly mentioned in the announcement, and so it remains to be seen if this will be addressed in the new negative list regulation. Another potential change that was not specifically mentioned in the announcement related to geothermal power plant companies – it was previously announced in press reports that geothermal power plant companies having capacity above 10 MW will be 100% open to foreign investment and up to 67% open for capacity below 10 MW. It also remains to be seen if this will still be addressed in the new negative list regulation. In the e-commerce space, under the current regulation, retail trading via the internet is closed for foreign investment. It remains to be seen if e-commerce (non-marketplace) will also be opened for foreign investment in the new negative list regulation.
2. **Streamlining business processing**: The Government intends to streamline licence processing by waiving certain recommendations currently required in certain business sectors, such as hospitality and entertainment (i.e. hotels (non-star, one star and two-star hotels), motels, recreation/amusement centres, art and entertainment centres, billiard or bowling centres, and golf courses.
3. **Overview of changes to foreign ownership restrictions**:
   - Sectors that are currently subject to a foreign ownership limit of 33% (currently applicable to distribution and warehousing) will see an increased limit of 67% (and, as noted above, it remains possible that foreign ownership of distribution companies that are affiliated with manufacturing companies will be entirely open). For cold storage business activities, 100% foreign ownership will be permitted.
   - 22 of the sectors that are currently subject to a foreign ownership limit of 49% will see an increased limit of: (i) 67% (14 business sectors) and (ii) 100% for eight business sectors (e.g. sports centres, film processing and crumb rubber).
   - 11 of the sectors that are currently subject to a foreign ownership limit of 51% (currently applicable to 18 business sectors) will see an increased limit of: (i) 67% (10 business sectors) and (ii) 100% for one business sector (i.e. restaurants). The foreign ownership limitation for the remaining seven business sectors will remain the same.
   - All of the business sectors which are currently subject to a foreign ownership limit of 55% in the 2014 Negative List (currently applicable to 19 business sectors) will see an increased limit of 67%.
   - All of the business sectors which are currently subject to a foreign ownership limit of 65% foreign ownership (currently applicable to three business sectors, i.e. the operation of a telecommunication network which is integrated with telecommunications services, fixed telecommunication network operation and mobile telecommunication network operation) will see an increased limit of 67%.

- One of the eight business sectors that are currently subject to foreign ownership limit of 85% (manufacturing of pharmaceutical raw materials) will be open to 100% foreign investment. The foreign ownership limitation for the remaining seven business sectors will remain the same.
- Five of the 17 business sectors which are currently subject to 95% foreign capital limitation (e.g. toll road operator and telecommunication equipment testing (laboratory test)) will see an increased limit of 100%.
- Certain business activities which are currently allocated only for domestic investment will be opened for foreign investment subject to certain foreign ownership limitations (e.g high voltage electrical installation (49%), in-land transportation (49%), health support services (67%) (e.g. medical diagnostics providers and laboratories), film industry including film distribution (100%)).
- Sectors that are currently subject to foreign ownership limit of 30% in the 2014 Negative List will not see any changes (32 business sectors) (e.g. agrotourism, tropical fruits cultivation, grape cultivation).

This note is intended to give a high level overview of the proposed negative list as part of the economic stimulus package issued by the Government and is not intended to provide an exhaustive list of the proposed negative list. As noted above, this initiative will need to be stipulated under a specific Presidential Decree replacing the 2014 Negative List which we understand is currently being finalised by the Government and will be released very shortly. We will provide a further update once the proposed regulation is issued. Please do not hesitate to contact us if you need more detailed advice, or have specific questions on foreign investments into Indonesia.

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