INDONESIAN INVESTMENT UPDATES – REVAMPING THE LAW ON FOREIGN INVESTMENT

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Background

Presidential Regulation No. 10 of 2021 (the "**Investment Law**") is the implementing regulation for the Omnibus Law, and it came into effect on 4 March 2021. The Investment Law revokes the foreign investment limitations imposed by Presidential Regulation No. 76 of 2007 and Presidential Regulation No. 44 of 2016, or more commonly referred to as the Negative List. This update provides a brief overview of the changes to Indonesia's foreign investment law.

Closed Business Fields

Both the Omnibus Law and the Investment Law provide that all business fields are open to investment activities, except those which are declared closed or reserved for the Indonesian government.

The number of business fields which are entirely closed for foreign investment reduced from 20 to 6, as business fields such as the operation of public museums, production of alcoholic beverages, and provision of air navigation services have been removed from the list. Note that while there are no new provisions restricting foreign ownership in the previously-closed business fields, operating these business fields may still require compliance with other regulatory or licencing requirements.
List of closed business fields:

- Narcotics and Class I drugs cultivation;

- Gambling and/or casino-related activities;
- Fishing species protected under Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- Coral reefs harvesting;
- Chemical weapons manufacturing industry; and
- Industrial chemical and ozone-depleting substances industry.

Prioritised Business Fields

A business field is prioritised if it satisfies one or more of the following criteria: (a) national strategic program; (b) capital-intensive field; (c) labour-intensive field; (d) high-technology; (e) pioneer industry; (f) export-oriented; and/or (g) research, development, and innovation-oriented.

Incentives are provided in both fiscal and non-fiscal forms to prioritised business fields. 245 business fields were identified as being prioritised, of which 183 business fields are eligible to receive tax allowances; 18 business fields are eligible to receive tax holiday; and 44 business fields are eligible to receive investment allowances.

Non-fiscal incentives include ease of business licencing, provision of supporting infrastructure, guaranteed availability of energy, raw materials, immigration, employment, and other facilities in accordance with prevailing laws and regulations.

Cooperatives and Micro, Small, and Medium Enterprises ("CMSME")

Selected business fields are allocated to CMSMEs and are closed for foreign investment or large-scale domestic investment. These business fields concern activities which do not use advanced technology, have a specified process which is labour intensive or culturally significant, and/or have less than IDR10 billion in capital (excluding land and buildings).
Foreign investors, however, may be involved in business fields which are open to partnership between CMSMEs and larger companies.

Restricted Business Fields

The Investment Law restricts only 46 business fields as compared to 350 under the Negative List. These restricted business fields may be entered into by all investors which comply with the prescribed capital requirements. These restrictions on foreign investment, however, do not apply to investments within the prescribed special economic zones.

Minimum Foreign Investment Threshold

The minimum foreign investment threshold prescribed in the Investment Law is consistent with existing requirements, being IDR10 billion excluding the value of any land and buildings. The minimum foreign investment threshold does not apply in relation to investments in technological start-ups within the special economic zones.

Remarks

Foreign investors should take note that the absence of a business field from the Investment Law may not necessarily mean that they are free from all foreign ownership restrictions. The Investment Law does not revoke the prevailing laws and regulations in relation to specific business fields which may be in force, as long as they are not in conflict with the Investment Law. As more implementing regulations of the Omnibus Law are still in the pipeline, we may only be able to appreciate the effects of these changes when the dust settles.