



# OMNIBUS 'UNCONSTITUTIONAL' LAW AND WHAT IT MEANS TO INVESTORS

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Just one year after Law no.11 of 2020 on Job Creation (Omnibus Law) passed, the Indonesian Constitutional Court (the “Court”) decided on 25 November 2021 that the Omnibus Law was “conditionally unconstitutional” on legislative procedural grounds. This ruling comes after much political pressure from activist groups and trade unions who have condemned the bill from the beginning. This is the first ruling of its kind. The Omnibus Law was intended to intensify Indonesia’s economic attractiveness to foreign investors.

The court has set a deadline of 2 years for lawmakers to ‘redo’ the legislative process and rectify the Law. While the court has not expressly said what is meant by “redoing the legislative process” it is assumed the Government would need to go through the entire law-making process from scratch.

Until the law has been rectified, the Government is to refrain from issuing new implementing regulations of the Omnibus Law. However, if the Government fails to rectify the error, the Omnibus Law will become permanently unconstitutional by 26 November 2023.

## What now?

All current provisions in the law and its implementing regulations remain valid for two years or until the revision is issued (whichever is sooner). The law only becomes void if the

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Government and lawmakers fail to 'redo' the law by 26 November 2023.

The Court's ruling does not have retroactive effect. This means that decisions based on the Omnibus Law between the period 25 November 2021 and 26 November 2023, will remain in effect even if the law becomes void on 26 November 2023.

President Jokowi has publicly said that the Government respect the Court's ruling. They are aiming to rectify the Omnibus Law within time frame given by the Court. He further reassured that the current provisions of the Omnibus Law are still in effect, and provided certainty and safety to business for their current investment under the Omnibus Law.

Despite Jokowi's promises, the ruling leaves much uncertainty for investors. It is expected that some investors may adopt a 'wait and see' attitude in the short term due to the unclear nature of the Court's ruling but we believe most investors are assured of the government's clarifications. There is also the possibility of fresh legal challenges against the Omnibus Law arising as there is still ongoing political scrutiny. However, given the rosy economic outlook, there may be opportunity costs if one delays its decision to invest in Indonesia.

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