

## Client Update: Indonesia 17 March 2021

# Just in Time, Indonesia's Priority Investment List is Set to Boost Economic Growth



Continuing our Overview Series on the Omnibus Law and in light of the issuance of the implementing regulations to the law, our team is currently examining these regulations to assess their impact on your business.

In this update, we will highlight changes in the corporate sector.

As part of the implementing regulations to the Omnibus Law (Law No. 11 of 2020), the government introduces a new investment list to replace the Negative Investment List under Presidential Regulation No. 44 of 2016 and Presidential Regulation No. 76 of 2007. The new investment list, aptly titled Priority Investment List, is issued under Presidential Regulation No. 10 of 2021 on Investment Business Activities.

The Priority Investment List is a crucial piece of the Omnibus Law puzzle. It is arguably much needed in Indonesia's current climate to increase foreign investment and boost economic growth in the country. Permitted and restricted sectors have been simplified, and instead of navigating a long list of businesses that foreign investors cannot invest in, they can now target the desired business and comply with the necessary conditions.

Indeed, all business sectors listed in the Priority Investment List are open for foreign investment unless expressly declared closed for foreign investment or can only be carried out by the central government. Like the old Negative Investment List, the list of business sectors in the Priority Investment List refers to the classification of sectors set out in the Indonesian Business Sector Classifications (“**KBLI**”).

Below we examine some of the notable provisions under the Priority Investment List.

## Client Update: Indonesia

17 March 2021

### Lifting of Investment Restrictions

Many business sectors that were previously restricted are now open to 100% foreign investment. The restricted business lines are slimmed down considerably, from 350 conditionally open business fields under the Negative Investment List, to 46 business fields under the Priority Investment List.

To highlight the breakthroughs introduced by the Priority Investment List, we detail the lifting of investment restrictions in certain sectors below.

No.	Sector	Position under the Negative Investment List	Position under the Priority Investment List
1.	Telecommunications and information technology which includes internet service provider, fixed telecommunication network provider, and mobile telecommunication network provider.	Foreign investment was capped at 67%.	100% open.  In addition, e-commerce/web portals business (even if the investment is less than IDR 100 billion) is now open to 100% foreign investment, from previously 49%.
2.	Health, which includes investment in hospitals, wholesale of pharmaceutical raw materials, healthcare equipment distribution, main clinic with specialists, and pharmaceutical products for human (finished drug manufacturing).	Closed for investment or capped to a certain percentage only.	100% open.  Investment in a company engaged in pharmaceutical products for human is also entitled to tax allowance.
3.	Energy and mineral resources, which includes investment in oil and gas construction (platform), onshore and offshore oil and gas drilling services, electricity installation maintenance and operation, and electricity generation of below 10 MW.	Investment was capped to certain percentage.	100% open.
4.	Construction implementation services or construction consultancy services, both using high technology or involving high risk.	Foreign investment was capped at 67%, or 70% if the investor is from an ASEAN country.	100% open.
5.	Trading, which includes distribution that is not affiliated with production.	Foreign investment was capped at 67%.	100% open.

No.	Sector	Position under the Negative Investment List	Position under the Priority Investment List
6.	Transportation, including in freight forwarding services and operation of terminal for land transportation of passengers.	<p>Foreign investment in a freight forwarding services company was capped to 67%.</p> <p>Meanwhile, no foreign investment in a company operating terminal for land transportation of passengers was allowed.</p>	100% open for both types.
7.	Plantations and agriculture, including palm oil seed plantations and agriculture of certain fruits and vegetables.	<p>For palm oil seed plantations, foreign investment was capped at 95%.</p> <p>For agriculture of certain fruits and vegetables, foreign investment was capped at 30%.</p>	100% open for both types.
8.	Press, including publication of newspaper, magazines, and bulletins.	Closed for foreign investment	<p>Must be 100% domestically owned at the time of its establishment. After that, foreign investment is capped at 49% and can only be made by way of a capital increase or business expansion.</p> <p>Also, note that foreign investment can only be carried out by way of an indirect portfolio investment through the Indonesia Stock Exchange ("IDX").</p>

Unlike the Negative Investment List, ASEAN investors should note that the new list does not distinguish ASEAN investors by giving them a lower foreign investment cap.

## Client Update: Indonesia

### 17 March 2021

Moreover, while the original Priority Investment List allows foreign investments in companies engaged in alcoholic beverage industries in Bali, East Nusa Tenggara, North Sulawesi, and Papua, this allowance was revoked by President Joko Widodo in early March 2021.

## Open Business Sectors

Under the Priority Investment List, business sectors that are open for investment are divided into:

### 1. *Prioritised business sectors*

Schedule I of the Priority Investment List classifies 245 business activities as prioritised business sectors. Based on our correspondence with an official at the Investment Coordinating Board (BKPM), business sectors categorised as prioritised are open to 100% foreign direct investment.

Prioritised business sectors are also entitled to receive fiscal and/or non-fiscal incentives. Fiscal incentives are given as tax incentives (such as tax allowances, tax holidays and investment allowances) and import duty exemptions. The granting of tax incentives depends on whether the relevant business sector qualifies. In contrast, incentives like exemption from import duty are granted to businesses that import machinery (including goods and materials) for industrial construction or development in the investment framework. Investors can apply for these incentives through the Online Single Submission (OSS) portal.

On the other hand, non-fiscal incentives are granted in various forms, including facilitating the issuance of business licenses, granting supporting infrastructure, and facilitating the immigration and human resources engagement process.

### 2. *Business sectors allocated for or requiring partnership with cooperatives and micro, small and medium enterprises and cooperatives.*

Schedule II of the Priority Investment List classifies 51 business fields that are reserved for micro, small and medium enterprises (“MSMEs”), and cooperatives. In addition, 38 business fields can only be carried out by a foreign investment company (commonly called a PMA company) in partnership with MSMEs and cooperatives.

Businesses that MSMEs and cooperatives can only carry out are those that do not use or only use simple technology; those that involve specialised process, are labour intensive or involve an element of cultural heritage; and/or those with capital below IDR 10 million (excluding the value of land and building).

Meanwhile, businesses that a PMA company can conduct in partnership with an MSME or a cooperative are businesses that are commonly conducted by MSMEs and cooperatives and/or businesses that the government intends to include in the global value chain.

## Client Update: Indonesia

### 17 March 2021

Foreign investors should note that indirect/portfolio investment transactions made through the IDX are exempted from this category and thus open 100% for foreign investment and do not require any partnership with MSMEs and cooperatives.

#### **3. Business sectors with specific requirements**

As mentioned earlier, business sectors with specific requirements used to form the bulk of the Negative Investment List, with about 350 business sectors that were conditionally open for investment. The Priority Investment List moves away from these requirements and only sets out 46 business sectors with specific requirements or conditions.

In general, these business sectors are divided into three categories:

- (i). business activities that are open for domestic direct investment;
- (ii). business activities that are open to limited foreign ownership; and
- (iii). business activities with special licensing requirement.

Like MSMEs, indirect portfolio investment transactions made through the IDX, in addition to business activities carried out within a special economic zone (*Kawasan Ekonomi Khusus*) are exempted from this restriction.

#### **4. Business sectors that are not included in any other categories**

Other business sectors that are not included in any previous categories are open to all investors, whether domestic or foreign.

## Closed Business Sectors

The Priority Investment List broadly divides the business sectors into closed and open for investment. Closed business sectors are divided into two: businesses that are closed for investment and businesses that the central government can only carry out.

Businesses that are closed for investment are listed under the Omnibus Law, namely:

1. cultivation and industry of class I narcotics;
2. chemical weapons manufacturing industry;
3. all forms of gambling and/or casino activities;
4. industrial chemical and ozone-depleting substances industries;

## Client Update: Indonesia

### 17 March 2021

5. the capture of any fish species as listed in Appendix I of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and
6. the utilisation and collection of coral and utilisation and collection of corals from nature for building materials/limestone/calcium, aquarium and souvenirs/jewellery, and live and dead coral (recent death coral from nature).

Meanwhile, businesses reserved for the central government involve activities that service in nature or fall under the defence and security framework that are strategic in nature and cannot be carried out or cooperated with other parties. The Priority Investment List does not explicitly specify the business activities and KBLI codes that fall under this category.

### Other Points of Interest

Conscious of the rise of start-ups, the Priority Investment List excludes the IDR 10 billion investment value requirement for foreign investors that invest in tech-based start-ups located in a special economic zone. But the list does not further specify the criteria for a PMA company to be categorised as a tech-based start-up and whether its articles of association must clearly state that such company's domicile is within a special economic zone.

In the event of a merger, the Priority Investment List regulates that the applicable foreign investment cap will be based on the surviving company's business sector. In an acquisition, the foreign investment cap will follow the business sector of the acquired company, while in a consolidation, the relevant cap will refer to the business license of the consolidated company.

Moreover, in line with Indonesia's long-term practice in protecting previous investments from subsequent tighter restrictions, the Priority Investment List applies the grandfather rule, and consequently, foreign ownership limitation under the list does not apply to:

1. all investments approved before the promulgation date of the Priority Investment List (i.e. before 2 February 2021); and
2. any foreign investors with a special right under a bilateral investment treaty between Indonesia and its origin country, unless the Priority Investment List is more favourable to the investors.

### Next Steps

We note that some of the KBLI codes set out in the Priority Investment List schedules do not match with the codes in KBLI 2020. Instead, these codes refer to KBLI 2017. Moreover, the Priority Investment List also contains codes that are not listed in KBLI 2017 and KBLI 2020. If faced with this situation, investors should seek further clarification from BKPM before proceeding with their investment.

Further, investors should note that existing laws and regulations relevant to their investment remain valid to the extent that they do not conflict with the Omnibus Law and the Priority Investment List.

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To read our previous alerts on the Omnibus Law, please click [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at [BD@ahp.id](mailto:BD@ahp.id).

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## Client Update: Indonesia

17 March 2021

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# Client Update: Indonesia

17 March 2021

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