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Has the Negative List Been Abolished?

By David Dawborn, Santi Darmawan, Vik Tang and Teguh Arwiko

Indonesia's Parliament has now passed the widely heralded, but controversial, Omnibus Law, which is intended to remove a plethora of complexities and red tape across a range of existing laws that are seen to hinder business efficiency in Indonesia. There has been considerable speculation in the media, based on comments from ministers and other bureaucrats, that foreign investment in Indonesia will be opened up significantly by doing away with the complex rules around foreign ownership in the so-called "Negative Investment List".

One important aspect of the Omnibus Law (actually named the "**2020 Job Creation Law**") is the amendment of Article 12 of Law No. 25 of 2007 (**Investment Law**). At this stage, the amendment comprises high-level changes to the broad framework for investment regulation in Indonesia rather than new detailed provisions on foreign ownership restrictions in specific sectors, as had been anticipated and widely reported.

The 2020 Job Creation Law requires that a new Presidential Regulation (to be known as the "**Investment Priority List**") be introduced within three months after it takes effect. We anticipate that this regulation will contain the following:

- Prioritised sectors to be given fiscal incentives;
- Sectors to be granted non-fiscal relief, including the easing of licensing, investment locations, and provision of infrastructure and energy support, among other things;
- Sectors designated for micro, small and medium-scale enterprises (**MSME**s), and requirements for cooperation between MSMEs and large enterprises, aside from equity participation; and
- Sectors that are open to investment, subject to certain conditions. It is not yet clear what these "conditions" might be, but we understand they are likely to include equity ownership restrictions in various sectors, similar to the foreign ownership restrictions under the Negative Investment List.

Under the Investment Law amendment, the following activities are expressly closed to *any* private investment, whether foreign or local:

(a) cultivation and manufacture of class 1 narcotics;

(b) casinos and any other form of gambling activities;

(c) fishery of fish species listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

(d) any use or collection of coral, including natural coral, for building materials/lime/calcium, aquariums or souvenirs/jewellery, and any natural living or recent death coral;

(e) chemical weapons production; and

(f) production of industrial chemicals and ozone-depleting substances.

However, this list of six prohibited sectors is unlikely to be an exhaustive replacement of the current Negative Investment List (set out in Presidential Regulation No. 44 of 2016 regarding the List of Business Fields which are Closed and Business Fields which are Conditionally Open for Capital Investment), which covers over 500 different sectors.

While we hope to see a reduction in the number of sectors that are either totally closed or partially open to foreign equity investment under the new Investment Priority List (in line with the government's stated broad objective of opening up Indonesia's economy and simplifying business generally), we understand that the contents of the new list are subject to ongoing discussions among various stakeholders, including Indonesia's Investment Board (BKPM) and sector-specific and technical regulatory authorities, coordinated by Indonesia's Coordinating Ministry for the Economy. As ever, the exact make-up of the new list of investment sectors will depend on various political and business inputs and considerations.

In terms of timing, as noted above, the Job Creation Law 2020 states that the required Presidential Regulation must be issued within three months of the law taking effect. As of today, the law has been passed by Indonesia's parliament and is now awaiting the signature of the President. Should the President fail to sign the law within 30 days, it will be deemed effective at that time in any event.

In conclusion, while the term "Negative Investment List" may no longer be used following the Omnibus Law changes, it is still likely that foreign investors will have to work with a system that includes sectoral foreign ownership restrictions.

Indonesia's economy has been severely impacted by the Covid-19 pandemic, and the country is in dire need of foreign capital to restore and grow the economy. We hope the government will now use the pro-business momentum of the Omnibus Law to significantly reduce the barriers to foreign investment in order to promote a more open and competitive economy for the post Covid-19 era.