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OMNIBUS LAW SERIES

CHAPTER II.i: INTRODUCTION OF THE NEW POSITIVE INVESTMENT LIST

Omnibus Series: Investment and Licensing Law

Chapter II.i – Introduction of the New Positive Investment List

Major amendments within the Indonesian Investment Regime have been introduced within specific sections of the Omnibus Law, and now further clarified through the issuance of implementing regulations which have essentially revolutionized the investment regime. There have been two implementing regulations that reformed the old investment regime, with the introduction of the brand-new Risk-Based Licensing system which supersedes the previous Commitment Based Licensing system and the new Positive Investment List.

Dramatic changes and adjustments in regards to the Investment Regine can be found within the Government Regulation No. 5/2021 on the Implementation of Risk-Based Business Licensing ("**GR 5/2021**") and Government Regulation issued Presidential Regulation No. 10 of 2021 on Investment Business Fields ("**PR 10/2021**").

PR 10/2021 entered into force on March 4th 2021, effectively annulling the Presidential Regulation No. 44 of 2016 on List of Business Fields Closed and Opened with Requirement for Investment (or Indonesian Investment Negative List, "**DNI**") and Presidential Regulation No. 76 of 2007 on Criteria and Requirements for the Compilation of Business Fields Closed and Opened with Requirements in the Investment Sector.

Within this subchapter, we will explore the differences between the new and the old regime of the investment regulation of the now 'positive' investment list in Indonesia whilst clarifying notable differences and a comprehensive overview of GR 10/2021.

Business Sectors Open for Investment

The most visible change towards Investment within PR 10/2021 is how the previous Negative Investment List approach that was once regulated by the DNI has now been replaced with the Positive Investment List approach. With the Positive Investment List, there is the overarching concept that all business fields are now open for investment, albeit with several exceptions and requirements.

Previously, the DNI distinguished business fields into those open to investment, closed to investment, and open to investment with requirements,[1] whereas the all-new PR 10/2021 simply states that all business fields are open to investment, with exceptions.[2] Notable amendments are laid out in the table below:

Before the Enactment of the Omnibus Law	After the Enactment of the Omnibus Law (PR 10/2021)
The DNI sets forth that business fields are divided into those: (a) Open for Investment;	The distinction brought about by the DNI no longer exists and in return is replaced by a more 'positive' approach to investment. PR 10/2021

[1] Clause 2 Paragraph (1), DNI
[2] Clause 2 Paragraph (1), PP 10/21

(b) Closed for Investment; and (c) Open for Investment with Certain Requirements.	states that all business fields are open for investment, except for those that are: (a) Declared closed for investment; or (b) Reserved for activities that can only be carried out by the Central Government.
There are 20 (twenty) business fields closed for investment under the DNI, as stipulated under its Attachment I.	Only the business fields noted as exceptions of the above are closed for investment under the PR 10/2021. (a) Business fields declared closed for investment are those that could not be invested in as regulated under Clause 12 of Law No. 25 of 2007 on Investment ("**Investment Law**"), as amended by the Omnibus Law. (b) Meanwhile, business fields that can only be carried out by the Central Government are those with service nature or carried out for national defense and security, strategic in nature and could not be done in collaboration with other parties.
Business fields open for investment under the DNI include those that are open with requirements, and those fully open for investment (which are the business fields not described in the above closed fields or the below fields with requirements. Business fields open for investment with requirements, as listed under include business fields that are: (a) Reserved for, or are in partnership with, UMKM and Cooperatives; and (b) Only open under certain conditions, such as: 1) with limited foreign capital ownership; 2) in certain locations; 3) with special licenses or permits; 4) only with 100% (one hundred percent domestic capital); and/or 5) with limited capital ownership in the context of the ASEAN cooperation.	Business fields open for investment in PR 10/2021 consist of: (a) Priority business fields; (b) Business fields that are allocated to or requires partnership with Cooperatives and UMKM; (c) Business fields with certain requirements; and (d) Those not included in the above, which may be entered by all investors (foreign or local). Business fields with certain requirements as referred in point (c) above can be operated by all Investors, including Cooperatives and UMKM, which meet: 1) The investment requirements for domestic Investor; 2) The investment requirements with limitations placed on foreign Investment; or 3) The investment requirements involving special licensing.

	It must be noted that these business fields with certain requirements do not apply for investment activities in the special economic zone, or investment that are carried out indirectly/ not carried out through the Indonesian Stock Exchange.

Priority Business Fields and Fiscal Incentives

Furthermore, the PR 10/21 lifts the spirit of investment even higher by setting out fiscal incentives for the newly regulated priority business fields, which were both not previously regulated under the DNI. Priority business fields are those that are, as detailed under Appendix I of the PR 10/21:

(a) nationally strategic program/project;
(b) capital-intensive;
(c) labor-intensive;
(d) advanced technology;
(e) pioneering industry;
(f) export-oriented/; and/or
(g) oriented toward research, development, and innovation activities.

Investors investing in the business fields that meet the criteria above are granted incentives, whether fiscal or non-fiscal, as below:

Fiscal Incentives	Non-Fiscal Incentives
(a) Tax incentives, consisting of: 1) Tax Allowance: Income tax facilities; 2) Tax Holiday: Reduction of corporate income tax; 3) Investment Allowance: The reduction of corporate income tax and net income reduction facilities for the purpose of investment and reduction of gross income for the purpose of certain activities. (b) Customs and excise incentives in the form of import duty exemption for the import of machinery as well as goods and materials for industrial construction or development in the framework of investment.	The ease of business licensing, provision of supporting infrastructure, guaranteed availability of energy, guaranteed availability of raw materials, immigration, manpower and other conveniences.

Requirements for Foreign Investment

With regard to foreign investment, similar to the requirements under Investment Law, the PR 10/21 still maintains that foreign investors:

(a) Can only invest in Limited Liability Companies that are incorporated and existing in Indonesia;
(b) Can only invest in large scale businesses with an investment value of more than IDR 10 Billion (excluding the value of land and related buildings used as the place of business).

Whereas, in connection to the new priority business sectors provision, it is also added that:

(c) The value of foreign investment for technology-based pioneering business fields can amount to IDR 10 Billion or lower if the investment is being executed in a special economic zone.

The investment regime has been revolutionized with more relaxed strictures and a more focused aim for the betterment of the Indonesian economy during these extremely difficult times. Whether or not this relatively large shift in the Indonesian investment regime will be for the better or worse will come in time. With the clear intention to encourage more foreign investment through the incentivised opportunities, it will only be after several years and clarifications of the new list will it be clearer whether this shift has impacted the Indonesian economy positively or negatively.

All in all, the PR 10/21 displays a generally more relaxed regime of investment, which is perhaps most well showcased by the permission of investment of alcohol, which was strictly prohibited under the structure of the previous regime. PR 21/2021 actually regulates alcohol open for investment, with requirements. Following the public disapproval of such change, we might expect this to be overturned in the future – but the concept of investments on its own is still at an all-new relaxed state.

Our commentary and update on Government Regulation No. 5/2021 on the Implementation of Risk-Based Business Licensing will be discussed in our second and final subchapter of Chapter 2 regarding Investment and Licensing Law.