



The Long Wait Is Over – The Indonesian Government Finally Releases the New Positive Investment List

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1. Introduction

On 2 February 2021, the President of the Republic of Indonesia finally enacted a new regulation on investment as one of the implementing regulations of Law No. 11 of 2020 on Job Creation (“**Omnibus Law**”), i.e. Presidential Regulation No. 10 of 2021 on Capital Investment Business Sector (“**PR 10/2021**”). The new regulation became effective on 4 March 2021.

PR 10/2021, known as the Positive Investment List, effectively revokes Presidential Regulation No. 44 of 2016 on the List of Closed Business Sectors and Open Business Sectors with Requirements in the Capital Investment Sector (“PR 44/2016”), also known as the “Negative List”, and drastically loosens the restrictions on foreign investment in Indonesia.¹

2. Four Categories of Business

PR 10/2021 further elaborates the four categories of business which are open to foreign investment, i.e.:

¹ Notwithstanding the above, under PR 10/2021, it is explained that the business sectors declared closed for capital investment are those sectors which cannot be commercialized under Law No. 25 of 2007 on Capital Investment as amended by the Omnibus Law, as follows:

- a. cultivation and industry of category I narcotics;
- b. all forms of gambling and/or casino activities;
- c. catching of fish species listed under Appendix I of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- d. utilization or taking of corals and utilization or taking of reefs from nature which are used for building materials/lime/calcium, aquarium, and souvenirs/accessories, as well as live coral or recent death coral from nature;
- e. chemical weapon manufacturing industry; and
- f. chemical industry and ozone-depleting substance industry.

Furthermore, there are certain business sectors only accessible to the Central Government, such as services in the context of defense & security, which given their strategic nature cannot be carried out by, or undertaken in cooperation with, other parties.

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a. Priority lines of business

The priority lines of business consist are 245 business types which are further grouped as follows:

- National Strategic Programs/Project
- Capital-intensive
- Labor-intensive
- High Technology
- Pioneering Industry
- Export Oriented
- Research, Development and Innovation Oriented

Businesses falling within the above groups are eligible for certain fiscal incentives, such as tax allowances, tax holidays and investment allowances (e.g. net income deductions or gross income deductions on certain activities), and non-fiscal incentives (such as simplified business licensing procedures).

These activities include:

- (i) five and four star hotels in certain areas, the automotive industry, coal gasification, geothermal exploration, and smelting of ores such as nickel and copper, which are eligible for tax allowances;
 - (ii) manufacture of main components of electricity power plant machinery, economic infrastructure (such as power plants using new and renewable energy), and digital economy, which includes data processing activities, hosting and other activities related thereto, all of which are eligible for tax holidays; and
 - (iii) the agricultural and forestry machinery industry and paper and cardboard packaging and box industry, which are eligible for investment allowances.
- b. Lines of business which are (i) allocated to, or (ii) are in partnerships with, cooperatives and micro, small and medium-sized businesses (“UMKM”)²

- (i) The lines of business allocated for cooperatives and UMKMs are determined based on the following criteria:
 - the business activities do not use technology or only use simple technology;
 - the business activities that have a specific process, are labor-intensive, and have a special and hereditary cultural heritage; and/or
 - the business capital for activities does not exceed IDR 10 billion, excluding building and land value.

In this category, 51 business types are to be allocated for cooperatives and/or UMKMs. For example, barbershop services, one star hotels, retail minimarkets, agriculture endeavors with crops that occupy less than 25ha, and the gathering of forest products.

² Under Law No. 20 of 2008, as amended by the Omnibus Law, businesses in the UMKM category are businesses having net assets of up to a maximum amount of IDR 10 billion, excluding land and building value, or having annual sale proceeds up to a maximum amount of IDR 50 billion. Meanwhile, “Large Business” is a business with net assets or annual sale proceeds larger than that of UMKM.

It should be noted that the minimum requirement of IDR 10 billion outside of the building and land value is still applicable for foreign investments and the foreign investment must be in the form of a limited liability company based in Indonesian law and domiciled within the territory of the Republic of Indonesia (“**PMA company**”), unless exempted by PR 10/2021 as provided below (see **Exemption to the Application of PR 10/2021**) or otherwise provided by the prevailing laws and regulations. Accordingly, business activities falling within this category cannot be carried out using foreign investments.

(ii) The lines of business open for Large Businesses partnering with cooperatives and UMKMs are determined based on the following criteria:

- business activities commonly carried out by cooperatives and UMKMs; and/or
- business activities supporting entrance into the supply chain of Large Businesses.

In this category, 38 business types are open for ownership by large companies in partnership with cooperatives and/or UMKMs. For example, manufacture of sawn wood with production capacity of less than 2,000 m³ per year, raising of broiler chicken, courier agent activities, salt production/extraction, and consultation in electrical power installation.

As mentioned in (i), considering that foreign investment is categorized as Large Business, relevant entities may carry out business in these categories subject to the partnership requirements.

c. Lines of business with certain requirements

The third category is for businesses subject to certain requirements, under which the foreign investment threshold still applies. Some 46 business types (this number being drastically decreased from the Negative List) fall under this category. For example:

- media publication/press business: 100% domestic investment during establishment and limited to 49% foreign ownership (through capital market) during expansion of business;
- domestic sea transportation for tourism: limited to 49% foreign ownership;
- postal activities: limited to 49% foreign ownership;
- scheduled commercial air transport: limited to 49% foreign ownership and the domestic owner must maintain a greater ownership percentage than the total foreign ownership (single majority); and
- traditional medicine industry: 100% domestic investment.

d. Lines of business that are not included in the above categories, which are open for all investors

3. Exemption to the Application of PR 10/2021

The foreign capital ownership limitations in PR 10/2021 do not apply in the case of:

- a. investment activities carried out indirectly or through portfolio transactions in the domestic capital market;
- b. businesses located in a special economic zone;
- c. investments that have been approved in certain business fields prior to the promulgation of this PR 10/2021, as stated in the business license, unless the provision is more favorable for said investment; and/or

- d. investors who obtain special rights based on an agreement between Indonesia and the country of origin of the investor, except for cases in which the benefits applicable to the same line of business stipulated in this presidential regulation are deemed more profitable for the investor.

Further, foreign investments in special economic zones involving technology-based startups are allowed an investment value equal to or less than IDR 10 billion (outside of the building and land value).

4. Change of Negative Investment List

PR 10/2021 has effectively revoked PR 44/2016 and opened several lines of business, previously restricted under PR 44/2016, for 100% foreign investment. Nevertheless, Article 11(2) of PR 10/2021 specifically prescribes that businesses in the finance and banking sectors are still subject to the licensing and other requirements applicable in the relevant sector.

Further, under Article 13 of PR 10/2021, it is stated that “*all provisions of the laws and regulations concerning the Capital Investment Business Sector shall remain in effect as long as they do not conflict with the provisions of this Presidential Regulation.*” Accordingly, this provision suggests that any requirement under sectoral regulations will remain valid after the issuance of PR 10/2021. For example, construction companies still need to have a local shareholder to be considered a “national” construction company with a minimum equivalent “large” classification as required under the Law No. 2 of 2017 on Construction Services and as amended by the Omnibus Law; otherwise construction businesses are no longer regulated under PR 10/2021 (*see table below*).

The table below presents several changes to foreign investment ownership:

Line of Business	Indonesia Standard Industrial Classification (Klasifikasi Baku Lapangan Usaha Indonesia or “KBLI”)	PR 44/2016 (Old Negative List)	PR 10/2021* *) Subject to sectoral requirements, if any
Public Work and Housing Sector			
The construction services (construction contractors) with high technology and/or high risks and/or work value of more than IDR 50 billion	00000 ³	(a) Foreign investment: Max. of 67% (b) Foreign investment by ASEAN countries’ investors: Max. of 70%	No foreign ownership limitation
Construction Consultancy Services/business services for projects which utilize advanced technologies and/or involve high risks and/or the work value is more than IDR 10 billion	00000 ⁴	(a) Foreign investment: Max. of 67% (b) Foreign investment by ASEAN countries’ investors: Max. of 70%	No foreign ownership limitation

³ KBLI 2020 provides construction services for various building types under various KBLI Nos., including 41011, 41012, etc.

⁴ KBLI 2020 provides engineering and technical consulting, which includes project management related to construction under KBLI No. 71102.

Line of Business	Indonesia Standard Industrial Classification (Klasifikasi Baku Lapangan Usaha Indonesia or “KBLI”)	PR 44/2016 (Old Negative List)	PR 10/2021* *) Subject to sectoral requirements, if any
<u>Trading Sector</u>			
Distributor’s sale not affiliated to production	00000 ⁵	Foreign investment: Max. of 67%	No foreign ownership limitation
Retail through Post and Internet (E-Commerce)	47911, 47912, 47913, 47914	Open for foreign ownership but must be in partnership with small and medium-scale enterprises	No foreign ownership limitation
Supermarket	47111	Closed for foreign investments for supermarkets with floor size below 1,200 sqm	No foreign ownership limitation
Department Store	47191	Open for foreign ownership up to 67%, for department stores with floor size between 400 – 2,000 sqm	No foreign ownership limitation
Warehousing	52101	Foreign investment: Max. of 67%	No foreign ownership limitation
<u>Transportation Sector</u>			
Freight Forwarding Services	52291	Foreign investment: Max. of 67%	No foreign ownership limitation
Multimode Transportation	52295	Foreign investment: Max. of 49%	No foreign ownership limitation
<u>Health Sector</u>			
Hospital	86103	(a) Foreign investment: Max. of 67% (b) Foreign investment by ASEAN countries’ investors: Max. of 70%	No foreign ownership limitation
Main Clinic (<i>Klinik Utama</i>)	86109, 86202, 86203, 86901	(a) Foreign investment: Max. of 67% (b) Foreign investment by ASEAN countries’ investors: Max. of 70%	No foreign ownership limitation
<u>Finance Companies</u>			
Investment finance company	64929, 64910	Foreign investment: Max. of 85%	No foreign ownership limitation
Venture capital	64991	Foreign investment: Max. of 85%	No foreign ownership limitation

⁵ KBLI 2020 does not provide a single KBLI No. for distributor businesses. However, it provides for “wholesale business,” depending on the product type, under initial KBLI Nos. 45-46.

Line of Business	Indonesia Standard Industrial Classification (Klasifikasi Baku Lapangan Usaha Indonesia or “KBLI”	PR 44/2016 (Old Negative List)	PR 10/2021* *) Subject to sectoral requirements, if any
<u>Advertising Sector</u>			
Advertising	73100	a. Domestic capital: 100% b. Foreign investment by ASEAN countries’ investors: Max. of 51%	No foreign ownership limitation



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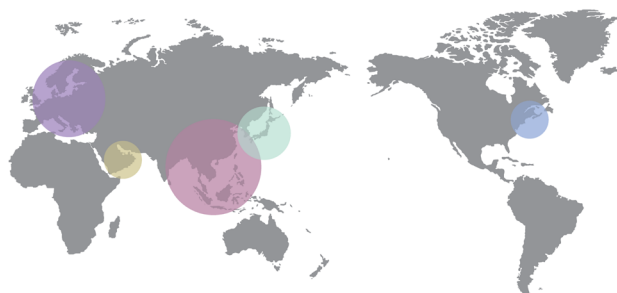
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