

THE NEW NEGATIVE INVESTMENT LIST

Presidential Regulation No. 39 of 2014 on The List of Business Fields that are Closed or Conditionally Open for Investment (the Negative Investment List/daftar Negatif Investasi (DNI)/“Negative List”) was issued recently and became effective on 24 April 2014. This new negative investment list revises and replaces the 2010 regulation. The new Negative List revises the components of the 2010 list classified as: a) closed for investment; and b) conditionally open for investment. The business fields covered by the Negative List are in a wide variety of sectors with perhaps the most influential changes being in the energy and mineral resources, trade (in particular, distribution), agriculture, power and pharmaceutical fields.

The Negative List introduces 27 new business fields as being conditionally open for investment and provides more flexibility for investment in 7 business fields. It also lists business fields which are entirely closed for investment, whether foreign or domestic. The following business fields are no longer completely closed for investment, namely, organizing regular motor vehicle testing; construction of customary residences; and construction of monuments. As a general rule, existing businesses will not be affected by the new changes and so there will be no need for such businesses to conform to the new requirements within a certain time period.

The business fields that are conditionally open for investment and the existing business fields where there is now greater or less flexibility include the following:

1. Agriculture. Several business fields have now been conditionally opened for foreign investment in the agriculture sector, focusing on the cultivation of staple crops, and research into and the development of horticultural products.

2. Energy and Mineral Resources. In line with the Government’s policy of supporting the energy sector, certain types of oil and gas service company have been opened in recent years. However, the following are still fully closed to foreign investment:

a) Onshore drilling;

b) Installation of onshore production facilities, pipelines, storage and marketing and

horizontal/vertical tanks;

c) Well operation and maintenance services, design and engineering services, and technical inspection services;

d) Power generation with a capacity of less than 1 MW, the installation, examination and testing of electric power installations.

As well as restricting foreign investment in certain oil and gas services companies, the new Negative List also redefines foreign investment conditions for power plant infrastructure and electric power installation services.

Under the previous 2010 Regulations, offshore drilling and operating and maintenance services of oil and gas facility is limited to 95% foreign investment. At present, the offshore pipeline installation, surveying services, platform construction and offshore drilling are limited to between 49% -95%.

3. Public Works. In the public works sector, “the management and disposal of non-hazardous waste” is now conditionally open to investment – it was formerly not included in the 2010 Regulation.

4. Tourism and the Creative Economy. The business field of movie promotion in the form of advertisements, posters, still photographs, slides, prints, banners, pamphlets, billboards, is now open for foreign investment from ASEAN countries but with a 51% cap. Previously, this business field was reserved for domestic investment. Nevertheless, some business fields are still restricted to 100% local investment (eg movie distribution, etc.).

5. Finance. In the finance sector, the maximum foreign investment for venture capital has been increased to 85% from 80%.

6. Trade. In the trade sector, trade services such as distribution, warehousing, cold storage have been restricted from 100% to 33% maximum foreign investment, and futures brokerage is now only conditionally open for 95% foreign investment.

7. Communications and Informatics. Several services related to telecommunications have been conditionally opened for foreign investment (ranging between 49 and 95%) including content service providers (ringtones, premium SMS, etc.), information service centers, internet interconnection services (NAP), and other auxiliary services. However, some others, eg the provision of construction services for telecommunications tower, etc, are still 100% closed to

foreign investment.

8. Transportation. The following business fields have been conditionally opened for a maximum of 49% foreign investment, namely construction of transportation terminals; multimodal transport; and organizing regular motor vehicles testing.

However, some business fields are still reserved for 100% local investment only, for example, public land transportation, etc.

10. Health. Investment conditions for several business fields in the medical services sector have been revised to provide greater flexibility for ASEAN countries to invest in sub-specialist hospital services and specialized clinic medical services. However, some business fields are still reserved for 100% local investment (eg Clinic General Medical Services, traditional medicine industry, etc).