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At Last, the Long Awaited and Much Anticipated ‘Positive Investment List’ has been Issued

Following the issuance of Law No. 11 of 2020 on Job Creation (“**Job Creation Law**”), Presidential Regulation No. 10 of 2021 on Investment Business Fields (“**PR 10/2021**”) containing a ‘positive investment list’ was issued on 2 February 2021 and will come into effect 30 days after its issuance.

PR 10/2021 serves as a hallmark of substantial changes to the government’s approach towards foreign investment; it revokes and replaces the 2016 Negative Investment List (Presidential Regulation No. 44 of 2016 on The List of Business Fields that are Closed or Conditionally Open to Investment) and Presidential Regulation No. 76 of 2007 on the Criteria and Requirements for the Categorization of Closed Business Fields and Business Fields Open with Requirements in the Field of Investment.

In line with the Job Creation Law, PR 10/2021 was issued to attract more investors and increase the ease of doing business in Indonesia, while at the same time aiming to strengthen cooperatives and micro, small and medium scale enterprises (“**MSMEs**”).

PR 10/2021 already refers to the 2020 Indonesian Standard Business Classification (*Klasifikasi Baku Lapangan Usaha Indonesia* – “**KBLI**”) under the Central Statistics Agency Regulation No. 2 of 2020 (which replaced the 2017 KBLI under Head of the Central Statistics Agency Regulation No. 95 of 2015 as amended by Head of the Central Statistics Agency Regulation No. 19 of 2017).

Below are the key points of PR 10/2021.

Business fields closed to foreign investment or can only be engaged in by the Central Government

Under PR 10/2021, capital investment is open in more business fields. Business fields closed to investment are listed under Article 12 of Law No. 25 of 2007 on Investment as amended by the Job Creation Law:

- a. the cultivation and trading of class I narcotics;
- b. all forms of gambling and/or casino activities;
- c. fishing for species listed in Appendix I to the Convention on International Trading in Endangered Species of Wild Fauna and Flora (CITES);
- d. utilizing or taking coral (*koral*) and utilizing or taking reef (*karang*) from nature to be used as building materials/lime/calcium, in aquariums, or to make souvenirs/jewellery, as well as live corals or dead corals (recently dead coral) from nature;
- e. the chemical weapons manufacturing industry; and
- f. the industrial chemicals industry and any harmful to the ozone layer materials industry.

Meanwhile, public service or strategic defense and security sector can only be conducted by the Central Government and no cooperation with other parties is allowed.

The categorization of business fields open to investment

PR 10/2021 now divides business fields open to investment into the following categories:

- a. prioritized business fields;
- b. business fields allocated for or which require partnership with cooperatives and MSMEs;
- c. business fields open to investment with certain requirements; and
- d. business fields not categorized as a., b. or c. and therefore are open to all investors (including foreign investors).

Prioritized business fields

According to PR 10/2021, prioritized business fields are those which meet the following criteria:

- a. included in national strategic programs/projects;
- b. capital intensive;
- c. labour intensive;
- d. utilize advanced technology;
- e. categorized as pioneering industries;
- f. oriented towards exports; and/or
- g. oriented towards research, development and innovative activities.

Investors in prioritized business fields are eligible to receive the following benefits:

- a. fiscal incentives, such as tax allowances, tax holidays, investment allowances and import-duty exemptions; and/or
- b. non-fiscal incentives, which include ease of business licensing, provision of supporting infrastructure, guaranteed availability of energy, raw materials, immigration, employment and other conveniences available under the applicable laws and regulations.

A total of 245 prioritized business fields are listed in Attachment I to PR 10/2021 and are generally divided into the following 3 (three) major categories:

- a. prioritized business fields eligible for a tax allowance, which include **among others** the following lines of business:
 - industry of products made from coal;
 - power plants, but only micro power plants and mini power plants with an investment value below IDR100 billion;
 - tourism areas, with the exception of those located in special economic zones;
 - 5-star hotels and 4-star hotels, which must be located in certain locations specified in Attachment I to PR 10/2021.
- b. prioritized business fields eligible for a tax holiday, which include **among others** the following lines of business:
 - manufacturing the main components of power plants, which includes the power plant generator manufacturing industry and power plant turbine manufacturing industry;
 - economic infrastructure, which includes new and renewable power plants, the construction of toll roads with a low Internal Rate of Return (IRR) and the construction of ports with a low IRR.
- c. prioritized business fields eligible for an investment allowance, which include **among others** the following lines of business:
 - electric power control and distribution equipment industry;
 - transformer/*transformator* (with a voltage of 70 – 500 kV), rectifier and voltage stabilizer industry.

Apart from the above, PR 10/2021 expressly states that business fields that are not listed in Attachment I may also be eligible for fiscal or non-fiscal incentives if such incentives are provided under the specific laws and regulations on the particular line of business.

Business fields allocated for or which require partnership with cooperatives and MSMEs

The business fields that are allocated for cooperatives and MSMEs are determined based on the following criteria:

- a. do not use technology or that use simple technology;
- b. involve specific process, are labor intensive, and have a special cultural heritage and are hereditary; and/or
- c. require less capital than IDR10 billion excluding the value of the land and buildings used.

Meanwhile, large-scale businesses which require partnership with cooperatives and MSMEs are those which meet the following criteria:

- a. mostly engaged in by cooperatives and MSMEs; and/or
- b. encouraged to be included in the supply chains of large-scale businesses.

Large-scale businesses are defined in Law No. 20 of 2008 on Micro, Small and Medium-Scale Businesses (as amended by the Job Creation Law) as productive economic businesses engaged in by business entities with a net asset value or annual sales proceeds higher than those of Medium-Scale

Enterprises, and include state-owned national enterprises, private businesses, joint ventures and foreign businesses engaged in economic business activities in Indonesia.

The 89 business fields that are allocated for or which require partnership with cooperatives or MSMEs are listed in Attachment II to PR 10/2021 for example, power plants < 1 MW, minimarkets and 1-star hotels, while business fields which require partnership with cooperatives or MSMEs include among others, marketing, distribution, large-scale trading and exporting fishery products, consultancy on electric power installations and clinical health laboratories.

Business fields open to investment, but with certain requirements

The lines of business which all investors may engage in (both local and foreign), including cooperatives and MSMEs are those that meet:

- a. investment requirements for local investors;
- b. investment requirements with restrictions on foreign capital ownership; or
- c. investment requirements with special permits.

These lines of business are listed in Attachment III to PR 10/2021:

NO.	LINE OF BUSINESS	KBLI NUMBER	REQUIREMENT
1.	Publisher of Newspapers, Magazines and Bulletins (press)	58130	<ul style="list-style-type: none"> • 100% local capital investment at its establishment • Max. foreign capital investment: 49% (through the capital market) for a business expansion or development
2.	Private Broadcasting Agency (LPS)	60102	<ul style="list-style-type: none"> • 100% local capital investment at its establishment • Max. foreign capital investment: 20% for a business expansion or development
3.	Subscription Broadcasting Agency (LPB)	60202	<ul style="list-style-type: none"> • 100% local capital investment at its establishment • Max. foreign capital investment: 20% for a business expansion or development
4.	Radio Community Broadcaster	60102	<ul style="list-style-type: none"> • 100% local capital investment at its establishment • Max. foreign capital investment: 20% for a business expansion or development
5.	Television Community Broadcaster	60202	<ul style="list-style-type: none"> • 100% local capital investment at its establishment

NO.	LINE OF BUSINESS	KBLI NUMBER	REQUIREMENT
			<ul style="list-style-type: none"> Max. foreign capital investment: 20% for a business expansion or development
6.	Mailing Activities	53100	Max. foreign capital investment: 49%
7.	Scheduled Commercial Air Transportation	51101	<ul style="list-style-type: none"> Max. foreign capital investment: 49% National investors' capital ownership must be more than the total capital of the foreign investors (single majority)
8.	Domestic Non-Scheduled Commercial Air Transportation	51102	<ul style="list-style-type: none"> Max. foreign capital investment: 49% National investors' capital ownership must be more than the total capital of the foreign investors (single majority)
9.	Air Transportation Activities	51109	<ul style="list-style-type: none"> Max. foreign capital investment: 49% National investors' capital ownership must be more than the total capital of the foreign investors (single majority)
10.	Liner and Tramper Domestic Marine Transportation for Passengers	50111	Max. foreign capital investment: 49%
11.	Domestic Marine Transportation for Tourism	50113	Max. foreign capital investment: 49%
12.	Pioneer Domestic Marine Transportation for Passengers	50114	Max. foreign capital investment: 49%
13.	Liner and Tramper Domestic Marine Transportation for Goods	50131	Max. foreign capital investment: 49%
14.	Domestic Marine Transportation for Special Goods	50133	Max. foreign capital investment: 49%
15.	Pioneer Domestic Marine Transportation for Goods	50134	Max. foreign capital investment: 49%
16.	Public Shipping Domestic Marine Transportation	50135	Max. foreign capital investment: 49%
17.	Liner and Tramper International Marine Transportation for Goods	50141	Max. foreign capital investment: 49%

NO.	LINE OF BUSINESS	KBLI NUMBER	REQUIREMENT
18.	International Marine Transportation for Special Goods	50142	Max. foreign capital investment: 49%
19.	Interprovincial General Inland Water Transportation	50214	Max. foreign capital investment: 49%
20.	Pioneer Interprovincial General Inland Water Transportation	50215	Max. foreign capital investment: 49%
21.	Inter-District/Inter-City General Inland Water Transportation	50216	Max. foreign capital investment: 49%
22.	Pioneer Inter-District/Inter-City General Inland Water Transportation	50217	Max. foreign capital investment: 49%
23.	Intra-District/Intra-City General Inland Water Transportation	50218	Max. foreign capital investment: 49%
24.	River and Lake Transportation for Passengers with Fixed and Scheduled Routes	50211	Max. foreign capital investment: 49%
25.	River and Lake Transportation for Passengers with Non-Fixed and Non-Scheduled Routes	50212	Max. foreign capital investment: 49%
26.	River and Lake Transportation with Non-Fixed and Non-Scheduled Routes for Tourism	50213	Max. foreign capital investment: 49%
27.	River and Lake Transportation for General Freight and/or Animals	50221	Max. foreign capital investment: 49%
28.	River and Lake Transportation for Special Freight	50222	Max. foreign capital investment: 49%
29.	River and Lake Transportation for Hazardous Freight	50223	Max. foreign capital investment: 49%
30.	Main Equipment Industry	25200	Capital ownership requires approval from the Minister of Defence. <i>M&T Remarks: Under the previous 2016 Negative Investment List, this line of</i>

NO.	LINE OF BUSINESS	KBLI NUMBER	REQUIREMENT
			<i>business was strictly reserved for 100% local capital investment.</i>
31.	Industry of Liquor Containing Alcohol	11010	<ul style="list-style-type: none"> • New capital investment is allowed in the provinces of Bali, East Nusa Tenggara, North Sulawesi, and Papua with due observance of the local culture and practices. • Otherwise, the Head of the Investment Coordinating Board (<i>Badan Koordinasi Penanaman Modal – “BKPM”</i>) can approve it in response to a proposal from the governor. <p><i>M&T Remarks:</i> <i>Under the previous 2016 Negative List, this line of business was closed to investment.</i></p>
32.	Industry of Beverages Containing Alcohol: Wine	11020	<ul style="list-style-type: none"> • New capital investment is allowed in the provinces of Bali, East Nusa Tenggara, North Sulawesi, and Papua with due observance of the local culture and practices. • Otherwise, the Head of the BKPM can approve it in response to a proposal from the governor. <p><i>M&T Remarks:</i> <i>Under the previous 2016 Negative List, this line of business was closed to investment.</i></p>
33.	Industry of Beverages Containing Malt	11031	<ul style="list-style-type: none"> • New capital investment is allowed in the provinces of Bali, East Nusa Tenggara, North Sulawesi, and Papua with due observance of the local culture and practices. • Otherwise, the Head of the BKPM can approve it in response to a proposal from the governor. <p><i>M&T Remarks:</i> <i>Under the previous 2016 Negative List, this line of business was closed to investment.</i></p>
34.	Industry of Traditional Medicine Products for Humans	21022	100% local capital investment

NO.	LINE OF BUSINESS	KBLI NUMBER	REQUIREMENT
35.	Industry of Wooden Building Products	16221	100% local capital investment
36.	Industry of Coffee Processing with Geographical Indications	10761	100% local capital investment <i>M&T Remarks: This line of business and KBLI number 10761 were not included in the 2016 Negative List.</i>
37.	Industry of Rendang	10750	100% local capital investment <i>M&T Remarks: This line of business and KBLI number 10750 were not included in the 2016 Negative List.</i>
38.	Ship Industry: - <i>Phinisi</i> - Outriggers - Ships made of timber with distinctive traditional designs	30111	100% local capital investment
39.	Industry of Carving Handy Craft out of Wood which is not <i>Mebeller</i> . Wood Carvings, Reliefs, Masks, Sculptures, Puppets (<i>Wayang</i>)	16293	100% local capital investment
40.	Industry of Traditional Cosmetics	20232	100% local capital investment <i>M&T Remarks: This line of business and KBLI number 20232 were not included in the 2016 Negative List.</i>
41.	Industry of Raw Materials for Traditional Medicine for Humans	21021	100% local capital investment <i>M&T Remarks: This line of business and KBLI number 21021 were not included in the 2016 Negative List.</i>
42.	Industry of Batik: - <i>Hand-Painted Batik</i> - <i>Printed Batik</i> - <i>A combination of Hand-Painted and Printed Batik</i>	13134	100% local capital investment <i>M&T Remarks: Under the previous 2016 Negative List, the hand-painted batik industry was reserved for MSMEs and cooperatives; while the printed batik industry</i>

NO.	LINE OF BUSINESS	KBLI NUMBER	REQUIREMENT
			<i>required partnership with an MSME or cooperative.</i>
43.	Industry of Crackers, Flakes, <i>Peyek</i> , and the Likes (Factory Made and Non-Factory Made)	10794	100% local capital investment <i>M&T Remarks:</i> <i>Under the previous 2016 Negative List, this line of business was reserved for MSMEs and cooperatives.</i>
44.	Retail Trading of Liquor or Alcoholic Beverages	47221	With a designated distribution network and place
45.	Retail Sidewalk Vendor Trading of Liquor or Alcoholic Beverages	47826	With a designated distribution network and place
46.	Travel Bureau Activities for Umrah and Special Hajj	79122	100% local capital investment and the religion must be Islam <i>M&T Remarks:</i> <i>This line of business and KBLI number 79122 (which is new, under the 2020 KBLI) were not included in the 2016 Negative List.</i>

The requirements in Attachment III of PR 10/2021 above do not apply to investments in special economic zones. Further clarification from Online Single Submission (“OSS”) Agency/BKPM is required on the implementation of the non-applicability of these requirements in Attachment III of PR 10/2021.

As can be seen, PR 10/2021 significantly reduces the number of lines of business in various sectors in which foreign shareholding was limited under the 2016 Negative Investment List. Among others, the following lines of business (which often attracts foreign investors) are not included in Attachment III to PR 10/2021. Therefore, arguably, they should be open to 100% foreign shareholdings under PR 10/2021 when it comes into effect:

- oil and gas construction services
- oil and gas support services
- small-scale power plants with a capacity of 1 – 10 MW
- power plants with a capacity of > 10 MW
- geothermal power plants with a capacity of ≤ 10 MW
- operation and maintenance of electric power installations
- department stores with a sales floor area 400m² – 2,000m²
- warehousing
- provision of security guards, money and valuable goods transportation guards, security services using animals
- private hospitals
- distribution of medical equipment
- pest control/fumigation services

- distribution of trade goods not affiliated with production
- battery industry for electric vehicles

Despite not being included in Attachment III to PR 10/2021, in practice, it is advisable to check with the OSS Agency/BKPM and the relevant technical ministries, just to make sure that no unwritten policy applies to the line of business that the Client or investor proposes to engage in. It is not uncommon that unwritten policies override the regulation or additional requirements are imposed.

The ‘grandfather’ clause

Similar to the 2016 Negative Investment List, PR 10/2021 also contains a clause under which the foreign shareholding limits based on PR 10/2021 do not apply to:

- capital investment approved for a certain line of business before the issuance of PR 10/2021, as stated in the business license (*perizinan berusaha*), unless the provisions of PR 10/2021 are more beneficial for that investment; or
- capital investment for which special rights have been obtained under an agreement between Indonesia and the investor’s home country, unless the provisions of PR 10/2021 are more beneficial for that investment.

Despite this, in practice, it is also advisable to re-check with the OSS Agency/BKPM before proceeding with any corporate action or transaction related to a company’s shareholding composition, as in our experience, the grandfather clause may be applied differently and on a case-by-case basis.

Separately, PR 10/2021 also clearly states that in the event of a merger, acquisition or consolidation between companies in the same line of business:

- the foreign shareholding limit in the surviving entity stated in its business license (*perizinan berusaha*) applies;
- the foreign shareholding limit in the acquired entity stated in its business license (*perizinan berusaha*) applies; or
- the foreign shareholding limit in the new entity due to a consolidation is that which applies under the applicable regulations at its establishment.

Foreign investment value

In line with the applicable BKPM regulations on investment licensing and facilities, under PR 10/2021, foreign investors may only engage in large-scale business activities with an investment value of more than IDR10 billion, excluding the value of the land and buildings they use. However, PR 10/2021 provides some ‘leniency’ for foreign investments in special economic zones for technology-based start-up businesses; their investment value may be equal to or less than IDR10 billion, excluding the value of the land and buildings they use.

Closing remarks

As PR 10/2021 is still very new, going forward, we expect to see various significant changes in the development of the foreign investment landscape in Indonesia. This is considering that the licensing requirements for businesses in Indonesia are also changing as an implementation of the risk-based business licensing mandated by the Job Creation Law.

According to an official of the OSS Agency/BKPM in our informal consultation, the OSS system still has not yet been updated to reflect PR 10/2021 and the 2020 KBLI. In the meantime, the foreign ownership limitations and requirements which apply still refer to the 2016 Negative Investment List and the 2017 KBLI. It is expected that the OSS system will only be updated to accommodate the 2020 KBLI and PR 10/2021 at the earliest three months after PR 10/2021 comes into effect (ie in around June 2021).

Therefore, changes to the investment ecosystem in Indonesia are still ongoing and we will continue to monitor the rapid changes that will definitely be beneficial for foreign investments in Indonesia.

The Indonesian version of PR 10/2021 including its attachments can be accessed through this link [[hyperlink to PR 10/2021 and its attachments](#)].

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