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Indonesia to relax foreign investment rules

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As part of its 16th economic package, the Government of Indonesia (GOI) announced on 16 November 2018 that in order to attract further foreign investment, it intends to relax the restrictions on foreign direct investment (FDI) in certain business sectors.

Reportedly[1] and as originally envisaged by the GOI, 100 percent FDI will be allowed in 54 business sectors currently included in the 2016 negative list[2] (2016 DNI) that up until now were closed or restricted for FDI. For certain sectors, the requirement for foreign investors to partner with a micro, small, and medium business or cooperative (MSMBC) and/or to obtain a recommendation from the relevant ministry will also be removed.

The exact business sectors for which the restrictions will be relaxed will be determined in the official new negative list, which is yet to be issued by the president. Reports indicate that the most important changes will be as per below. The actual relaxations in the new negative list may differ from the below. The proposal has sparked criticism, primarily from the Indonesian Chamber of Commerce and Industry (KADIN) and the Indonesian Employers Association (Apindo). It has been reported that the Coordinating Minister of Economic Affairs, Darmin Nasution, will discuss the proposal with stakeholders in the coming days, which he expects to produce a decision that benefits all parties.

If the proposal is implemented as submitted by the GOI, this is an exciting development for foreign investors into Indonesia and promises to have far-reaching impact by creating a wealth of additional investment opportunities in this rapidly developing market of 260 million people. We will provide further updates when more details become available.

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1 Source: Ini Daftar 54 Bidang Usaha yang Bisa Dimiliki Asing 100%

2 *Presidential regulation 44/2016 on the list of business sectors that are closed or conditionally open for investment*, enacted on 12 May 2016.

1. Energy and natural resources

Business sectors	Current FDI limitations
Geothermal drilling services	95 percent
Oil and gas construction services: platforms	75 percent
Offshore oil and gas drilling services	75 percent
Geothermal operating and maintenance services	90 percent
Power generation beyond 10 MW	General: 95 percent PPP: 100 percent during concession period
Geothermal surveying services	95 percent
Testing and analysis of electrical installation of high/extra-high voltage electrical power generating and utility installation	49 percent

In some sectors, such as power generation, this is not a huge shift as these dispensations already existed. However, it indicates an overall change of stance that sends a positive message to the market, which will in the long run make projects more bankable.

For offshore drilling, the increase of maximum FDI from 75 percent to 100 percent is substantial and seems to be driven by the GOI's desire to increase domestic oil production, especially in locations that are technically more challenging.

There is no change in respect of onshore and offshore drilling services (maximum of 49 percent FDI), construction of spherical tanks (maximum of 49 percent FDI), onshore oil and natural gas upstream production and pipeline installation (reserved for domestic investment), power generation of below 1 MW (reserved for domestic investment), 1 – 10 MW (maximum of 49 percent FDI), geothermal power generation of up to 10 MW (maximum of 67 percent FDI) and testing and analysis of electrical installation of low/medium voltage power generation and utility installation (reserved for domestic investment).

2. Technology, Media, and Telecommunications

Business sectors	Current FDI limitations
Retail sale via mail order and internet	Partnership
Internet cafés	Reserved for MSMBCs
Fixed/wired telecommunications services	67 percent
Wireless/satellite telecommunications	

services	
Content telecommunications services (ringtone, premium short message services, etc)	
Call centres and other added-value telephony services	
Internet service providers	
Data communications system services	
Public internet telephony services	
Internet interconnection services (network access point), other multimedia services	

Previously, online retail sales to consumers required a partnership with an MSMBC. As such, this business line was not typical or popular to use. Internet retailing has boomed across the globe in recent years, and Indonesia is no exception. The relaxation in this sector opens the market to the world's existing leading players, such as Amazon and Alibaba.

The revision means that investment in almost all telecommunication and internet-based businesses in the 2016 DNI will be relaxed. It can be expected that it will create opportunities for a wide range of businesses in the technology, media, and telecommunications (TMT) sector, making it one of the more significant changes to the negative list. It reflects the ambitions of the GOI to accelerate the already rapid growth trajectory in this space, particularly in respect of mobile data.

Certain restrictions will remain, most notably the limitations on FDI for constructing, operating, and providing telecommunication towers (services) (100 percent domestic capital) and online marketplace business (i.e. e-commerce and other web portals/platforms) with an investment below IDR100 billion (maximum of 49 percent FDI). As it currently stands, it appears to also keep in place the limitations on wired/wireless/satellite telecommunications services that are integrated with telecommunications services (maximum of 67 percent FDI). The current limitations on media (television, radio, printed press, and broadcasting), as well as on postal services, would also remain.

3. Life sciences and health care

Business sectors	Current FDI limitations
Manufacture of patented medicines	85 percent
Manufacture of Class B medical devices: (surgical masks, hypodermic needles, patient monitors, condoms, surgical gloves, haemodialysis liquid, PACS, scalpels)	100 percent - requires special permit from the Ministry of Health
Manufacture of Class C medical devices: (IV catheters, x-rays, ECGs, patient monitors, orthopaedic implants, contact lenses, oximeters, densitometers)	

Manufacture of Class D medical devices: (CT scanners, MRIs, cardiac catheters, cardiac stents, HIV tests, pacemakers, dermal fillers, ablation catheters)	

The changes are an important relaxation of the requirements for pharmaceutical and medical device manufacturers. The measures seem to be aimed at promoting larger domestic production and increasing onshore life sciences know-how.

The manufacture of Class A medical devices (e.g. wadding, bandages, gauze, canes, infusion stands, sanitary napkins, adult diapers, hospital beds, and wheelchairs) remains limited to a maximum of 33 percent FDI and requires a special permit from the Ministry of Health.

The restrictions for distribution of pharmaceuticals and life science products will remain in place. Life science businesses will still need to take into account any FDI limitations and requirements to cooperate with domestic players in respect of their distribution channels.

Health care providers may have been anxiously awaiting the relaxation of FDI in their sector, however the current revision of the negative list does not contain any changes in this respect.

4. Diversified industrials (Manufacturing)

Business sectors	Current FDI limitations
Manufacture of clove cigarettes	For new investment, only for a small to medium scale cigarette manufacturer in partnership with a large-scale manufacturer holding an industrial business licence in a similar business sector
Manufacture of non-clove cigarettes	
Manufacture of other cigarettes	
Manufacture of paper wood pulp	100 percent domestic. Importation of raw materials permitted only in case of domestic insufficiency
Manufacture of crumb rubber	100 percent - subject to a special permit from the Minister of Industry only if integrated into the development of rubber estates
Destructive/non-destructive testing	100 percent domestic
Quantity surveying	100 percent domestic
Quality surveying	100 percent domestic
Supervisory surveys	100 percent domestic
Public opinion polling and market research	General: reserved for domestics. Investors from Association of Southeast Asian Nations (ASEAN) nations: FDI of up to 70 percent

The existing restrictions have not hampered foreign players from making headway in the Indonesian tobacco market - HM Sampoerna is 92.5 percent owned by the New York-based tobacco giant Philip Morris, and controls 35 percent of the country's tobacco market. British American Tobacco acquired a majority share in another large tobacco company, Bentoel, in 2009. However, the further relaxations will still be welcomed by investors.

Another relevant amendment is lifting the FDI restrictions for testing, surveying, and market research activities. Especially in this space, there are several companies that operate internationally for whom the relaxation of restrictions will create opportunities.

5. Transportation

Business sectors	Current FDI limitations
Passenger land transport on non-scheduled routes for tourism transport and specific destination transport	49 percent
International passenger sea transport	General: 49 percent ASEAN investors: 70 percent

The relaxation here has more limited impact, and air transportation is notable for its absence. Passenger land transport on non-scheduled routes for taxi and specific area transport remains limited to 49 percent FDI, whilst international passenger sea transport remains limited to 49 percent FDI (or 70 percent for ASEAN investors).

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