Insights

INDONESIA IN FOCUS NEWSLETTER - MARCH EDITION

Mar 18, 2021

New "Priority List" for foreign investment

The Indonesian government has issued Presidential Regulation No. 10 of 2021 (the “Regulation”) at the end of February, following the passage of its job creation law last year known as the Omnibus Law.

Notably in the Regulation, the previous negative investment list set out in Presidential Regulation No. 44 of 2016 (the “Negative List”) is now significantly shortened and what has been dubbed as a positive investment list (the “Positive List”) is introduced. The Positive List seeks to remove some foreign shareholding restrictions in the Negative List, at the same time providing fiscal and tax incentives to prioritised sectors, as well as governmental support including provision of supporting infrastructure and energy supply and simplified business licensing procedures. The new rules have come into effect on March 4, 2021.

The general principle under the Positive List is that a business sector is open to 100% foreign investment unless it is subject to a specific type of limitation. The sectors / businesses where (a) foreign ownership restrictions have been lifted (if not already so in the Negative List) and/or (b) will enjoy some tax incentives are:

- power plant and electricity generation, including geothermal power plants, power transmission, distribution, construction and installation;
- renewable energy;
- transport and mobility, including land transportation, electric vehicles (“EV”) and supply of EV parts, ship vessel traffic information systems and flight navigation;
- construction;
- oil and gas;
- coal; and

- pharmaceuticals including vaccine-making.

In addition, there are also priority business fields ("Priority List"), which are afforded the incentives mentioned at paragraph 2 above. For a business field to be eligible as a business under the Priority List, it must fulfil the following criteria:

- be included as a strategic national project/program;
- be labour intensive;
- be capital intensive;
- be oriented towards research and development, and other innovative activities;
- be export-oriented;
- involve a pioneer industry (metals, oil refining, renewables, marine transportation, etc.); and
- utilise advanced technologies.

One of the key things to remember is that the Regulation is not the only place to look when considering (a) foreign ownership restrictions and (b) other laws that require compliance in certain sectors. The cohesiveness and implementation of the intertwining legislative instruments (and with a view to more rules of implementation for the Omnibus Law) will be key in determining the efficacy of the Positive List and the foreign investment it can draw in.

Indonesia's newly set up sovereign wealth fund aimed at infrastructure projects

The establishment of Indonesia's sovereign wealth fund comes on the back of their newly-ratified Omnibus Job Creation Law to solve the investment bottleneck due to the country's degree of legal uncertainty. The Indonesia Investment Authority (abbreviated as the INA) has, since its genesis, carved itself as a different kind of sovereign wealth fund as it aims to attract foreign funds as co-investors, unlike other sovereign wealth funds that manages foreign exchange reserves or oil revenues.

The INA also differentiates itself from the Indonesian Investment Coordinating Board or BKPM as it not only accepts incoming funds in the form of loans, but also as equity or shares.

The INA will be a strategic partner for both local and foreign investors to help finance development programmes, particularly in the area of infrastructure and currently, there has been investment interest secured and expressed for tolls roads, ports and airport projects. Health, tourism and technology are other sectors identified as potential targets.

Some of the investment commitments via the INA are as follows:

- United Arab Emirates: USD 10 billion
- Japan Bank for International Cooperation: USD 4 billion
- United States International Development Finance Corporation: USD 2 billion
- Canada pension fund, CDPQ: USD 2 billion

And this is only the start. With a target of managing USD 20 billion, the Indonesian government has invested approximately USD 5.4 billion (IDR 75 trillion) just in 2021 alone.

The fund is expected to be onstream by mid-2021.

Clean energy investments in Indonesia

Indonesia has been stepping up its development of electric vehicles ("EV") since President Joko Widodo in late 2019 issued a decree outlining the roadmap for the development of EVs.

The Indonesian State Owned Enterprises Ministry is forming a state-owned battery holding company (the "Company"). Founded by state-owned smelting company MIND ID, mining firm Aneka Tambang, oil and gas giant Pertamina and electricity giant PLN, the Company is expected to develop an end-to-end domestic supply chain for EV batteries, with the aim of producing between 8 to 10-gigawatt hours' worth of batteries each year within the next four years. In term of development, the Company may form joint venture companies or join potential partners from China, South Korea, the United States or Europe.

The abundant reserves of nickel in Indonesia, about a quarter of global reserves, attracted investments from global EV battery makers including Contemporary Amperex Technology Co., Limited ("CATL"), LG Chem and most recently Tesla to create EV battery supply chain. In 2015, Indonesia started the construction of a nickel industrial park in Central Sulawesi province in Indonesia, which has now become the largest in the world.

Along the development of EV batteries, the Ministry of State-Owned Enterprises also announced the plan to form a holding company developing geothermal power. The holding company may be constituted by three state-owned companies that have been working on development and operation of a geothermal power plant. Once formed, this holding company would be the largest geothermal company in the world in terms of geothermal power generation capacity.

Tesla's investment plan in Indonesia

In February 2021, Tesla has submitted a proposal to the Indonesian government on its investment plans to set up plants in the country to make electric vehicle, lithium batteries and power generators. An energy storage system may also be in the pipeline.

It is worth noting that the Indonesian government has reinstated its ban on exports of nickel ore in January 2020 to support the development of the country's nickel industry.

Mr Septian Hario Seto, Indonesia's Deputy Minister in charge of mining and investment has commented that Tesla's proposal to the Indonesian government is slightly different from that of CATL and LG Chem as the base technology that Tesla will use is different. A key consideration of the Indonesian government in approving Tesla's investment plan would be the transfer of relevant technology from Tesla to the local community. The proposal from Tesla is under negotiation at this stage.

Banks entering the digital ecosystem in Indonesia

The COVID-19 pandemic has accelerated digitalisation around the world and in Indonesia, banks are making a foray into the digital ecosystem. This has prompted Indonesia's Financial Services Authority, OJK, to set out some guidelines for digital banks, set to be released by mid-2021.

OJK has affirmed that these guidelines would not be rule-based but would instead be a set of guiding principles for banks to operate digitally. Banks will be left to mitigate their own risk and fight for market share.

Despite being Southeast Asia's largest economy, banking penetration in Indonesia remains low, with the World Bank reporting that up to 52% of Indonesian adults or 95 million people, do not have a bank account. Thus, digital banking is expected to be a game changer in the country by increasing access to online banking facilities and digital payment methods, a boon during the COVID-19 pandemic as physical trips to banks and stores may be discouraged.

Local banks have been responding to the digitalisation wave. Bank Jago, for example, is set to become the first fully digital bank following its partnership with ride-hailing and digital payment services firm Gojek. Customers can then be offered banking services provided by Bank Jago on the app run by Gojek.

Watch this space for our update on OJK's guidelines for digital banks once it is released.

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