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Insights

INDONESIA IN FOCUS NEWSLETTER - MAY EDITION

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Indonesia's new Ministry of Investment

The Ministry of Investment was recently established on 28 April 2021 to facilitate conducting business in Indonesia. The Investment Coordinating Board (Badan Koordinasi Penanaman Modal, or BKPM) had its bureaucratic status upgraded to establish the new ministry, which aims to boost domestic and foreign direct investments in Indonesia. By aiming to connect and synergise investments, the Indonesia government hopes for the new ministry to contribute to the creation of more jobs in the country. The role of the Minister of Investment has been filled by the chairman of the BKPM, Bahlil Lahadalia.

Under Lahadalia's lead, the BKPM showed strong performance in the pandemic stricken 2020 with investments amounting to 826 trillion rupiah (US$57.16 billion), which is an increase from the 817 trillion rupiah (US$56.57 billion) in 2019. The fledgling ministry is aiming to achieve 900 trillion rupiah (US$62.32 billion) of total investment realisation in 2021.

So far, the ministry is on track to meet its 2021 target. In Q1 2021, Indonesia saw a stronger performance than in 2021 with total investment realisation being 219.7 trillion rupiah (US$15.20 billion). This is a 4.3% increase over 2020's figures of 210.7 trillion (US$14.58 billion) and is a quarter of the 2021 target.

An 11.7% increase in investments was enjoyed outside of the Java economic hub in Q1 2021. In general, manufacturing benefited from the lion's share of investments with strong showings by housing, industrial estates and office buildings amounting to 29.4 trillion rupiah (US$2 billion).

The top five sources of foreign direct investments in Q1 2021 in descending order are: Singapore (US$2.6 billion), China (US$1 billion), South Korea, Hong Kong and Switzerland (US$500 million). This has led to the creation of more than 300,000 new jobs.

Green energy opportunities in Indonesia

In April 2021, the UK and Indonesia have announced the creation of a new joint trade dialogue that will open green energy opportunities for UK companies in Indonesia, strengthening their £3 billion trade and investment links by identifying nine key priority sectors which includes renewables and green energy. The new Joint Economic and Trade Committee (JETCO) will help promote and develop trade, investment and economic cooperation ties and address market access barriers affecting UK businesses trading with Indonesia.

In addition, Pertamina, an Indonesian state-owned energy company, is planning to issue its maiden green bonds within 12 months as it moves to secure funds to progress its renewable energy projects, in particular geothermal developments. This bonds issuance will help expand Pertamina's green energy business to contribute between 10% and 15% of its total revenue within five years, compared to the current figure of less than 5%.

The Indonesia-Singapore bilateral treaty comes into effect

On 9 March 2021, Singapore's Minster for Trade and Industry Chan Chun Sing and Indonesia's Foreign Minister Retno Marsudi announced that the 2021 Singapore-Indonesia Bilateral Investment Treaty (the "Treaty") had come into force.

The Treaty aims to promote stronger economic ties between Singapore and Indonesia by offering greater protection for investors venturing into new markets.

Singapore's Ministry of Trade and Industry noted that Singapore continues to be Indonesia's top source of FDI. Investments in 2020 totalled US$9.8 billion. At the same time, Indonesia was one of Singapore's top ten trading partners in 2020 with bilateral trade reaching US$36.7 billion. Both sides expect the Treaty to increase bilateral investment by 18-22% over the next five years. Ms. Retno Marudi (Indonesian Minister for Foreign Affairs) has expressed that this growth in bilateral investment could translate to approximately US$200 billion in the region by 2030.

The Treaty contains important international law protections to investors.

As an overview, the Treaty has updated provisions which cover the following:

(a) Updated definition of investment
The Treaty broadly defines investments to be "any kind of asset owned or controlled, directly or indirectly" that may involve "commitment of capital, the expectation of gain or profit, the assumption of risk or certain duration". Bonds, loans, debt instruments as well as turnkey, construction, management, production and other similar contracts are considered investments under the Treaty.

(b) Treatment of investment
The Treaty requires a minimum standard of protection for investments. Specifically, it requires each country "not to deny justice in any legal or administrative proceedings". The Treaty also requires each country to "take such measures as may be reasonably necessary to ensure the protection and security of the investment."

(c) National treatment and most-favoured-nation treatment

The provision on national treatment protects foreign investors against discrimination by requiring the State to give them no less favourable treatment as would be given to domestic investors, or other similarly situated foreign investors. However, the national treatment obligation are limited by carve-outs specified in Annex I of the Treaty.

(d) Expropriation

The Treaty limits the State to expropriate or nationalise an investment only where: i) there is a public purpose; ii) such expropriation or nationalisation is carried out in a non-discriminatory manner; and iii) it is done in accordance with due process of law. The State must also compensate without undue delay. There is a carve-out such that the expropriation provisions do not apply to compulsory licenses granted in relation to intellectual property rights in accordance with the *Treaty on Trade-Related Aspects of Intellectual Property Rights under the WTO Agreement*.

(e) Compensation for losses

The Treaty provides that foreign investors are to be given compensation for losses that would be no less favourable compared to other foreign or domestic investors in the event that loss is suffered from war, armed conflict, civil disturbances, a state of national emergency, revolt, insurrection, riot, or other similar situations.

(f) Transfers

Foreign investors' ability to transfer money freely and without delay in and out of the host State in relation to its investments is protected. However, there are several carve-outs which enable a State to restrict transfers. This will usually be the case where the State must safeguard the balance of payments under Article 9. In addition, the State may prevent a transfer through the "equitable, non-discriminatory, and good faith application of its law relation to" various events including but not limited to bankruptcy or insolvency, criminal or penal offences, and social security, public retirement or compulsory savings schemes.

(g) Dispute resolution

The Treaty obliges disputing parties to resolve their disputes via consultations following which the parties may submit the claim to a competent court with jurisdiction or before a tribunal for arbitration. The Treaty also includes an investor-State dispute mechanism which enables an investor to submit a dispute to arbitration under the ICSID Convention or the UNCITRAL Rules.

The entry into force of the Treaty will ultimately provide foreign investors with greater protection and confidence.

China's Tencent Cloud launches first data centre in Indonesia

Tencent Holdings recently established a data centre in the central business district of Jakarta as part of its move into the region's digital economy. Tencent also intends to launch a second data centre in Indonesia by the end of this year.

The Jakarta data centre is operational and already supports a number of businesses in the country spanning finance, entertainment, and enterprise communications. Indonesian companies that use Tencent's cloud services include Neo Commerce, Aestron, and JOOX.

Poshu Yeung, Senior Vice-President of Tencent Cloud International commented on the clear growth of the mobile internet market in Southeast Asia. Tencent's foray into Jakarta would enable clients in the region to benefit from bespoke solutions offered by company.

Following its launch in Indonesia, Tencent's Cloud infrastructure network spans 27 regions and 61 availability zones. The company began expanding its cloud enterprise business outside China three years ago in a bid to gain a greater share of the global market for cloud services.

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