

The New Positive List – A Significant Liberalisation of Foreign Investment in Indonesia

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Overview



Following the new investment regulatory framework introduced by Law No. 11 of 2020 on Job Creation (known as the “**Omnibus Law**”), the President of the Republic of Indonesia issued Presidential Regulation No. 10 of 2021 on Investment Lines of Businesses (“**New Positive List**”). The New Positive List was enacted on 2 February 2021, however, the official text was only made publicly available in the last few days. It will take effect on 4 March 2021, being 30 days as of its enactment date.

In line with the objectives of the Omnibus Law to promote investment and create job opportunities through economic growth, the New Positive List marks a significant opening up of many business sectors in Indonesia, including by lifting the maximum foreign ownership restriction in many business sectors which were previously regulated under Presidential Regulation No. 44 of 2016 (known as the “**Negative List**”). Key sectors where previous foreign ownership restrictions have now been lifted include:

- > energy (including power generation above 1MW, and construction and other support services in the oil & gas and power sectors);
- > construction services;
- > distribution/wholesale (including drugs wholesale) and certain retail trading;
- > transportation (notably including ports and airports); and
- > telecommunications sectors (including fixed and mobile network providers, internet service providers and telecommunications tower providers).



This publication sets out some main provisions of the New Positive List and brief comparison between the New Positive List and the now revoked Negative List.



Generally 100% open, unless subject to a specific restriction

The general principle is that, unless it is subject to one of the specific types of limitation summarised below, a line of business is 100% open to foreign investment.

That said, it is important to note that the New Positive List does not seek to regulate foreign ownership limitations in banking and financial services sectors. These will be regulated in the relevant banking and financial services regulations, therefore the current foreign ownership limitations in these sectors are unaffected by this New Positive List.



Lines of business conditionally open to foreign investment

Conditionally open lines of business under the New Positive List

This category of foreign investment limitation contemplates the following types of foreign ownership restriction:

- > lines of business that are reserved entirely for domestic investors;
- > lines of business that are subject to foreign ownership limitations; and
- > lines of business that are subject to special licensing requirements.

The previous Negative List had a similar concept of lines of business either closed, or conditionally open to foreign investment. Accordingly, the most notable change brought about by the New Positive List is the extensive reduction in the number of lines of business subject to such a restriction, thus bringing about the greatest liberalisation in foreign ownership limitations in Indonesia since the concept of a “negative list” on investment was introduced in the 1980s.

The lines of businesses within this category are listed in Exhibit III of the New Positive List, and cover 46 lines of businesses, reduced from 350 under the previous Negative List.

Key examples of lines of business that remain subject to restrictions are tabled below.

Line of Business	Restriction
Press	100% domestic investment during the establishment; maximum 49% foreign investment (through capital market) during the business expansion
Private broadcasting institution	100% domestic investment during the establishment; maximum 20% foreign investment during the business expansion
Subscription broadcasting institution	100% domestic investment during the establishment; maximum 20% foreign investment during the business expansion
Postal activities	Maximum 49% foreign ownership
Scheduled commercial air transportation	Maximum 49% foreign ownership and the domestic owner shall remain having greater ownership than the total foreign ownership (single majority).
Domestic unscheduled commercial air transportation	Maximum 49% foreign ownership and there must be a single majority domestic shareholder
Traditional medicine industry	100% domestic investment
(Defence) main equipment industry	Ownership shall be based on the approval of the Minister of Defence

We have also attached to this publication a list of notable examples of lines of business where foreign ownership limitations have now been liberalised by the New Positive List. This list is not exhaustive.

Exceptions

Even where foreign ownership limitations have been retained under the New Positive List, the foreign ownership limitation **does not apply** in the following specific circumstances:

- > businesses located in a Special Economic Zone;
- > indirect/portfolio investments made through the domestic capital markets – this exception for foreign investment through listed companies is retained from the previous Negative List;
- > grandfathering – as with the previous Negative List, if any line of business is treated less favourably in the New Positive List, then level of foreign investment already approved prior to the enactment of the New Positive List would still be grandfathered if stated in the relevant Business Licence. In the case of M&A, the applicable foreign investment limitation will be of that stipulated under the Business Licence of the relevant surviving entity or target company (as applicable); and
- > investments subject to more favourable treatment in a treaty between Indonesia and the investor's country of origin.



Reservations for cooperatives and micro, small and medium scale businesses ("MSME")

It is important to note that, for certain of the lines of business that are generally liberalised from a foreign investment limitation perspective under the New Positive List, there remain certain specific reservations within those lines of business for activities of a particular scale or complexity to be undertaken by, or in partnership with, cooperatives and MSME. These reservations do, in effect, impose foreign ownership restrictions on such activities, as foreign investment cannot, by definition, be undertaken in Indonesia in the form of cooperatives or MSME.¹

The types of lines of business subject to such restrictions can be summarised as follows:

Businesses allocated to cooperatives and MSME (and therefore not open to foreign investment), being:

- > Businesses that do not require technology or which use simple technology;
- > Labour intensive business having a particular process and cultural heritage; and/or
- > Businesses with capital not exceeding IDR10 billion, excluding land and buildings.

Businesses that are open to Large Scale Businesses (including for foreign investment) but are subject to compulsory partnership with cooperatives and MSME:

- > Businesses which are commonly carried out by cooperatives and MSME; and/or
- > Businesses encouraged to enter supply chain.

The specific lines of businesses that are subject to such restrictions are listed in Exhibit II of the New Positive List covering 89 types of businesses.

Some examples of such lines of business are:

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|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| > electricity installation (small and medium voltage); | > certain types of retail trading (e.g. medicines in drug store, non-supermarket retail, minimarket, non-department store retail, laundry service, beauty salon, barber shop); | > one-star hotels; and |
| > building construction using simple and medium technology; | | > courier agent. |
| > general medical clinic; | | |

The allocation to MSME/cooperatives and compulsory cooperation with MSME/cooperatives also does not apply to indirect/portfolio investments made through domestic capital markets.

¹ Under the New Positive List, a foreign investor may only conduct Large Scale Business with an investment value of above IDR10 billion (excluding land and buildings), except for a technology based start-up business located in a Special Economic Zone (which can have an investment value of IDR10 billion or less).



In addition to the very significant foreign ownership liberalisation introduced through the New Positive List, unlike the Negative List (and the older lists), the New Positive List also identifies a list of prioritised sectors for investment that are entitled to receive fiscal and non-fiscal incentives (tax holidays, tax allowances, investment allowances, customs and excise allowances, ease of licensing, provision of supporting infrastructure, etc.) in accordance with the prevailing laws and regulations.

The prioritised sectors cover national strategic projects, labour intensive businesses, capital intensive businesses, hi-tech businesses, pioneer industries, export-oriented businesses and research and innovation-oriented businesses. These prioritised lines of businesses are listed in Exhibit I of the New Positive List covering 245 types of businesses.

Below are some examples of prioritised lines of businesses entitled to such incentives:

Line of Business	Restriction
Geothermal (exploration and drilling)	Tax allowance (income tax facilities for certain line of business and/or investment in certain location)
Coal gasification in mining site	Tax allowance
Aluminium/bauxite/copper/nickel/gold/silver mining (processing and refining) – for new development and/or smelter expansion	Tax allowance
Coal liquefaction and upgrading located in certain provinces	Tax allowance
Cooking palm oil industry	Tax allowance
Textile garment industry	Tax allowance Investment allowance (reduction of corporate income tax, reduction of net income in the framework of investment and reduction of gross income in certain activities)
Cosmetics industry	Tax allowance
Pharmaceutical industry	Tax allowance
Iron and steel industry	Tax allowance
Automotive industry	Tax allowance
Motorcycle industry	Tax allowance
Micro power generation/mini power generation with investment value of below IDR100 billion	Tax allowance
Fabricated and natural gas, covering LNG regasification using FSRU, CBM, tight gas sand, shale gas, methane hydrate, refining and/or processing natural gas into LNG and/or LPG, gas originating from coal gasification	Tax allowance

Non-subsidy long distance railway transportation for passengers	Tax allowance
Cargo handling	Tax allowance
Development of e-commerce application	Tax allowance
Five stars hotels	Tax allowance
Four stars hotels	Tax allowance
Integrated oil and gas refinery	Tax holiday (reduction of corporate income tax)
Integrated oil and gas or coal based petrochemical industry	Tax holiday
Economic infrastructure covering renewable power plant, toll road with low IRR and port with low IRR	Tax holiday
Digital economy (data processing, hosting and related activities)	Tax holiday

It is important to note that the precise scope of the incentives to be granted to these prioritised sectors will be based on further implementing regulations, which are not yet issued as at the date of this publication.

The lines of businesses not listed as prioritised sectors under the New Positive List may still be entitled to fiscal and/or non-fiscal incentives under sectoral laws and regulations.





Set out below are comparison between the now revoked Negative List and the New Positive List in respect of some business sectors.



Closed lines of businesses

Out of 20 closed lines of businesses under the Negative List, the Omnibus Law retains six lines of businesses as the ones closed for investment, being: narcotics cultivation and industry, fishing of prohibited species, coral extraction, gambling and casino business, chemical weapons and manufacturing of industrial chemical or materials hazardous to ozone layer.

Some closed lines of business under the Negative List are now either open or subject to certain conditions under the New Positive List. Some examples are set out below.

Line of Business	Negative List	New Positive List
Wine industry	Closed	New investment can only be conducted in certain provinces, unless otherwise stipulated by the Head of Investment Coordinating Board based on the relevant governor's proposal – no foreign ownership restriction
Alcoholic beverage industry	Closed	New investment can only be conducted in certain provinces, unless otherwise stipulated by the Head of Investment Coordinating Board based on the relevant governor's proposal – no foreign ownership restriction
Terminal for land transportation passenger	Closed	Open (without condition)
Aviation navigation services	Closed	Open (without condition)
Radio frequency spectrum and satellite orbit monitoring station	Closed	Open (without condition)



Lines of business allocated to MSME/cooperatives or subject to partnership requirement with MSME and cooperatives

Line of Business	Negative List	New Positive List
Palm oil – seed plantation and plantation with a total area less than 25 hectare	Allocated to MSME	Open (without condition) and listed as prioritised sector
(Various types of) plantation (less than 25 hectare)	Allocated to MSME	Pepper and sugar cane plantation are listed as prioritised sectors – no specific conditions for other types of plantation regardless of its width
Construction implementation services using simple/medium technology and/or with low/medium risk and/or having work value up to IDR50 billion	Allocated to MSME	More detailed types of construction services using simple/medium technology are generally classified as businesses allocated to MSME, but there are no criteria based on the work value
Construction consultancy business using simple/medium technology and/or with low/medium risk and/or having work value up to IDR10 billion	Allocated to MSME	
Retail trading through mail and internet order	Subject to partnership requirement with MSME or cooperatives	Open (without condition)
Travel agent	Allocated to MSME	Open (without condition)
Radio and television community broadcasting agency	Allocated to MSME	100% domestic investment upon establishment. Maximum 20% foreign ownership during business expansion



Lines of businesses subject to certain conditions (including maximum foreign ownership limitation)



Plantation and plantation-based industry

Line of Business	Negative List	New Positive List
Plantation with a total area of at least 25 hectare with/without processing unit (in general)	Maximum 95% foreign ownership (with the obligation to establish 20% plasma plantation)	Open (without condition) Pepper and sugar cane plantation are listed as prioritised sectors
Palm oil – seed plantation with a total area of at least 25 hectare	Maximum 95% foreign ownership (with the requirement that at least 20% of the raw material shall originate from own plantation)	Open (without condition) and listed as prioritised sector



Energy and mineral resources and energy related services

Line of Business	Negative List	New Positive List
Oil and gas construction (platform)	Maximum 75% foreign ownership	Open (without condition)
Oil and gas construction (onshore upstream oil and gas production installation)	100% domestic investment	Open (without condition)
Oil and gas construction (onshore distribution pipeline)	100% domestic investment	Open (without condition)
Oil and gas construction (offshore distribution pipeline)	Maximum 49% foreign ownership	Open (without condition)
Onshore oil and gas drilling service	100% domestic investment	Open (without condition)
Offshore oil and gas drilling service	Maximum 75% foreign ownership	Open (without condition)
Geothermal drilling service	Maximum 95% foreign ownership	Open (without condition) and listed as prioritised sector

Oil and gas well operation and maintenance service	100% domestic investment	Open (without condition)
Oil and gas design and engineering service	100% domestic investment	Open (without condition)
Geothermal operation and maintenance service	Maximum 90% foreign ownership	Open (without condition)
Electricity generation below 1 MW	100% domestic investment	Allocated to MSME/cooperatives
Small scale electricity generation (1-10 MW)	Maximum 49% foreign ownership	Open (without condition)
Geothermal electricity generation 10 MW or below	Maximum 67% foreign ownership	Open (without condition)
Electricity generation above 10 MW	Maximum 95% foreign ownership (maximum 100% foreign ownership in a PPP scheme during concession period)	Open (without condition)
Electricity transmission	Maximum 95% foreign ownership (maximum 100% foreign ownership in a PPP scheme during concession period)	Open (without condition)
Electricity distribution	Maximum 95% foreign ownership (maximum 100% foreign ownership in a PPP scheme during concession period)	Open (without condition)
Construction and installation of electricity installation on electricity supply installation	Maximum 95% foreign ownership	Construction and installation of electricity installation on low and medium voltage electricity supply installation is allocated to MSME/cooperatives
Construction and installation of electricity installation on extra high and high voltage electricity utilisation installation	Maximum 49% foreign ownership	Open (without condition)
Construction and installation of electricity installation on medium and low voltage electricity utilisation installation	100% domestic investment	Open (without condition)
Electricity installation operation and maintenance	Maximum 95% foreign ownership	Open (without condition)



Construction and public works

Line of Business	Negative List	New Positive List
Construction implementation service using high technology and/or having high risk and/or with a work value of more than IDR50 billion	Maximum 67% foreign ownership (maximum 70% for ASEAN investors)	Open (without condition)
Construction consultancy service using high technology and/or having high risk and/or with a work value of more than IDR10 billion	Maximum 67% foreign ownership (maximum 70% for ASEAN investors)	Open (without condition)
Drinking water business	Maximum 95% foreign ownership	Open (without condition)



Trading

Line of Business	Negative List	New Positive List
Supermarket with selling area of less than 1,200 sqm	100% domestic investment	Open (without condition) (only non-supermarket, non-department store and minimarket retail trading are allocated to MSME)
Minimarket with selling area of less than 400 sqm, including convenience store and community store	100% domestic investment	Allocated to MSME/cooperatives
Department store with selling area of 400 – 2,000 sqm	Maximum 67% foreign ownership, with special licence from the Minister of Trade (must be located in a shopping mall/not standalone and can only add outlet based on pay performance)	Open (without condition)
Distributor not affiliated to production	Maximum 67% foreign ownership	Open (without condition)
Warehouse	Maximum 67% foreign ownership	Open (without condition)



Tourism

Line of Business	Negative List	New Positive List
Two stars hotel	Maximum 67% foreign ownership	Open (without condition) Five and four-stars hotel are open (without condition) and listed as prioritised sector
One-star hotel	Maximum 67% foreign ownership	Allocated to MSME/cooperatives
Non-star hotel	Maximum 67% foreign ownership	Allocated to MSME/cooperatives



Transportation and transportation-related services

Land transportation for goods and passengers (in general)	Maximum 49% foreign ownership	Open (without condition)
Terminal supporting services	Maximum 67% foreign ownership	Open (without condition)
Port	Maximum 49% foreign ownership Special Licence from the Ministry of Transportation in respect of minimum capital requirement	Open (without condition)
Airport services	Maximum 49% foreign ownership	Open (without condition)
Air transportation supporting services	Maximum 67% foreign ownership	Open (without condition)
Airport supporting services	Maximum 67% foreign ownership	Open (without condition)
Maritime cargo handling services	Maximum 67% foreign ownership (maximum 70% for ASEAN investors)	Open (without condition) Cargo handling services in general are listed as prioritised sector
Non-commercial air transportation	Maximum 49% foreign ownership and single majority	Maximum 49% foreign ownership and single majority – applicable to all types of air transportation



Telecommunications, media and technologies

Line of Business	Negative List	New Positive List
Fixed telecommunication network	Maximum 67% foreign ownership	Open (without condition)
Mobile telecommunication network	Maximum 67% foreign ownership	Open (without condition)
Telecommunication network integrated to telecommunication services	Maximum 67% foreign ownership	Open (without condition)
Telecommunication content services	Maximum 67% foreign ownership	Open (without condition)
Call centre and telephony added value services	Maximum 67% foreign ownership	Open (without condition)
Internet service provider	Maximum 67% foreign ownership	Open (without condition)
Data communication system services	Maximum 67% foreign ownership	Open (without condition)
Telephony internet services for public	Maximum 67% foreign ownership	Open (without condition)
Internet interconnection services (NAP) and other multimedia services	Maximum 67% foreign ownership	Open (without condition)
Telecommunication tower provider, operation and maintenance services and construction services	100% domestic investment	Open (without condition), except for telecommunication central construction conducted by construction company using simple/ medium technology, which is allocated to MSME/cooperatives
Newspaper, magazine and bulletin publishing (press)	100% domestic investment	100% domestic investment upon establishment and maximum 49% foreign ownership (through capital market) for business expansion
Operation of e-commerce/OTT platforms with investment value of less than IDR100 billion	Maximum 49% foreign ownership	Operation of all types of e-commerce/ OTT platforms are open (without condition) – no investment value criteria



Pharmaceutical and Health

Line of Business	Negative List	New Positive List
Pharmaceutical industry	Maximum 85% foreign ownership	Open (without condition) Certain types of pharmaceutical industries are also listed as prioritised sectors
Hospital	Maximum 67% foreign ownership (maximum 70% for ASEAN investors)	Open (without condition) Primary health clinics and private maternity clinics, clinics general medical, general healthcare clinics, residential health services and basic healthcare service are allocated to MSME/cooperatives

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