

INDONESIA: WHAT'S NEW? THE INDONESIA 2016 NEGATIVE LIST – FOREIGN INVESTMENT OPPORTUNITIES REMAIN?



Further to the announcement of a series of Economic Stimulus Packages, the Indonesian Government has finally enacted the new foreign investment negative list (2016 Negative List)¹, setting out business activities that are either entirely closed, open and conditionally open to foreign investment.

The 2016 Negative List forms part of the wider 10th Economic Package that was announced in February 2016 aimed at boosting both domestic and foreign investment² and replaces the previous 2014 Negative List.

Opportunities for foreign investment

Overall, the 2016 Negative List provides further opportunities for foreign investment in comparison with the 2014 Negative List. A number of amendments introduced by the 2016 Negative List have liberalised investment rules across a range of business sectors.

There are 34 business activities previously closed or conditionally open to foreign investment that have been removed from the 2016 Negative List

in their entirety. These business activities are now therefore open to 100% foreign investment.

Notable sectors which are now entirely open to investment include, among other things:

1. Certain public works (specifically toll roads and non-hazardous waste management and disposal which were previously only open to 95% foreign investment).
2. Trading activities, specifically (direct selling, distribution (related to production) and futures brokerage).
3. Cold storage.
4. Various tourism activities and health services (including production of pharmaceutical raw materials and hospital management services).

A further 11 business activities are now also open to 100% foreign investment subject to certain local partnership and/or licence requirements, including the sugar industry, the crumb rubber industry, mail/online retail trade, salvage services and the healthcare equipment industry.

1 Presidential Regulation No. 44 of 2016 on the List of Business Fields Closed to Investment and Business Fields Conditionally Open for Investment, effective on 18 May 2016 and publicly available on 23 May 2016.

2 <http://www.hfw.com/Indonesia-whats-new-April-2016>



Set out below are some changes to certain key business sectors.

Energy and mineral resources sector

Previously, power plants (including geothermal power plants) with capacity of less than 1 MW were closed to foreign investment and those with capacity of between 1 and 10 MW were subject to a maximum foreign ownership level of 49%.

To support foreign investment into small-scale geothermal projects, the 2016 Negative List now provides that all geothermal power plants with a capacity of less than or equal to 10 MW are subject to an increased maximum foreign ownership level of 67%.

Additionally, several business activities in the electricity sector, such as high-voltage electricity construction and installation of high/extra high voltage facilities that were previously prohibited entirely to foreign investment can now be owned by foreign investors with ownership level of 49%.

Maritime transportation

The 2016 Negative List also reflects the Indonesian government's objectives to encourage foreign investment in the maritime transportation supporting business. This is in line with the desire of the President Jokowi administration to drive the Indonesian maritime sector and consistent with the Indonesian government effort to improve efficiency and reduce port handling times.

The 2016 Negative List increased the foreign ownership cap for maritime cargo handling services to 67% (increased from 49% previously). For investors from ASEAN member states that are willing to carry out maritime cargo handling services in Bitung, Ambon, Kupang or Sorong in the eastern areas of Indonesia, the foreign ownership is now capped at 70%. Higher foreign ownership levels

for investors from ASEAN member states are also granted for those who wish to engage in international sea transportation for passengers and goods.

Further, salvage service and/or underwater work are now 100% open to foreign investment but requires a special license from the Ministry of Transportation. These business activities were subject to cabatoge principle and therefore they were subject to 49% foreign ownership limitation.

Public works and construction

As explained above, certain activities in the public work sectors have been liberalised for foreign investment under the 2016 Negative List. The maximum foreign investment of construction planning activities have also been increased from 55% to 67%. More importantly, the 2016 Negative List has now increased the minimum construction work value for foreign investment to:

1. Rp10 billion (or approximately US\$800,000 at the time of writing) for both construction planning and supervision services (increased from Rp1 billion (or approximately US\$800,000 at the time of writing).
2. Rp50 billion (or approximately US\$3.8 million at the time of writing) for construction performance activities (increased from Rp1 billion (or approximately US\$80,000 at the time of writing).

Tourism and creative economy

The 2016 Negative List has significantly liberalised investment in the tourism sector. Many sectors that previously had a 49% foreign ownership cap, a requirement for partnership or were subject to local regulations are now open to 100% foreign investment. These sectors include restaurants, bars, cafes, sporting facilities including

swimming pools, tennis courts and football fields and fitness centres.

In addition the foreign investors are entitled to hold a 100% interest in the film production, processing, dubbing, editing and distribution sectors and in the ownership of movie theatres. These sectors were previously either closed to foreign investment or had a foreign ownership cap of 49%.

How HFW can assist?

Indonesia remains to be one of the largest markets in Asia which continues to provide opportunities to foreign investment. The Jokowi administration has been continuously improving the legal framework, including amending and issuing new legislation to support the business.

The Jokowi administration have so far issued more than 150 regulations subsequent to the announcement of the first Economic Stimulus Packages in September 2015. Whilst this seems to be good legal development, challenges remain as there are often grey areas in terms of enforcing such regulations and overlapping regulations. Given these challenges, foreign investors are strongly advised to seek further clarification from the Indonesia Investment Coordinating Board (or the BKPM) or professional legal advice from legal advisers with familiarity in structuring their investment in Indonesia. HFW has Indonesian lawyers and lawyers who have worked on Indonesian transactions who can advise and direct you further on how the 2016 Negative List may impact both your existing business and future business opportunities in Indonesia.

HFW is also able to assist you in structuring your investment, should you be interested in restructuring or starting your business in Indonesia, in compliance with all regulatory conditions and requirements under the Indonesia company and foreign investment legislation.



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