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Trade

Indonesia

1. Trade/Customs

A. New Regulation on the importation of forestry products

The relevant regulation on the importation of forestry products is Minister of Trade Regulation No. 97/M-DAG/PER/11/2015 on Import Provisions for Forestry Products ("**Regulation 97**"). Regulation 97 came into force on 1 January 2016 and revoked the previous regulation, i.e. Regulation No. 78/M-DAG/PER/10/2014 on Import Provisions for Forestry Products, as amended several times, most recently by Regulation No. 63/M-DAG/PER/8/2015 ("**Previous Regulation**").

Regulation 97 imposes the restriction that forestry products set out in the Appendix can only be imported by companies holding (i) an API-U or (ii) an API-P after securing an Import Approval from the Minister of Trade. Forestry products imported by API-U holders are only for trade purposes and it is prohibited to export them before they undergo domestic processing. Forestry products imported by API-P holders are only for raw materials or auxiliary materials for a self-production process, and are not allowed to be traded to other parties.

As comparison, under the Previous Regulation, API-U or API-P holders had to secure (i) a producer importer of forestry products (*importir produsen produk kehutanan* – "**IP Forestry Products**") license or (ii) a registered importer of forestry products (*importir terdaftar produk kehutanan* – "**IT Forestry Products**") license before importing forestry products. IP-Forestry Product licenses were granted to companies that import materials for their own production purposes (raw materials for further processing), while IT-Forestry Product licenses were granted to companies that import forestry products for trade purposes. Regulation 97 simplifies the rule and removes these licenses and API-U or API-P holders now need only secure an Import Approval.

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Import Approval

To secure an Import Approval, companies must file an online application with the Director General of Foreign Trade ("**Director General**"). The application must be accompanied by the following documents:

- a. An API-U or API-P.
- b. An Import Declaration
- c. A registered storage facility permit (*surat izin Tempat Penampungan Terdaftar – "TPT"*) or other evidence of storage facilities suitable for the imported product's particular characteristics, for holders of API-U.
- d. A recommendation from the Minister of Environment and Forestry.

Upon receipt of a completed application, the Director General has three days (maximum) in which to issue an Import Approval. The Import Approval will be valid for the same period as the recommendation from the Minister of Environment and Forestry.

Any forestry products that are imported not in line with Regulation 97 must be re-exported or destroyed. Any costs arising from the re-exportation or destruction are borne by the importers.

B. Government Introduces Regulatory Framework on Bonded Logistic Centers

As part of the second economic stimulus package introduced by the government last September aimed at boosting the country's economy, the government issued Government Regulation No. 85 of 2015 which amends Government Regulation No. 32 of 2009 on Bonded Storage Places ("**Regulation 85**") and Minister of Finance Regulation No. 272/2015 on Bonded Logistic Centers ("**Regulation 272**"). Regulation 85 and Regulation 272 introduces the concept of Bonded Logistic Centers (*Pusat Logistik Berikat*) as one type of Bonded Storage Place (*Tempat Penimbunan Berikat*) in Indonesia. A Bonded Storage Place is basically a building, site or area that meets certain requirements which is used to store goods for certain purposes and obtains import duty postponement. Previously, there were only 6 types of Bonded Storage Place, namely:

1. Bonded Warehouse (*Gudang Berikat*)
2. Bonded Zone (*Kawasan Berikat*)
3. Bonded Exhibition Area (*Tempat Penyelenggaraan Pameran Berikat*)
4. Duty Free Shop (*Toko Bebas Bea*)

5. Bonded Auction Place (*Tempat Lelang Berikat*)
6. Bonded Recycling Zone (*Kawasan Daur Ulang Berikat*)

It is expected that the introduction of the Bonded Logistic Center would encourage investment in the manufacturing sector in Indonesia because these centers would facilitate the flow of basic materials. At present many industrial companies keep their materials or products in bonded storage units in Singapore and Malaysia.

Operation and Business

1. Regulation 85 defines a Bonded Logistic Center as a Bonded Storage Place to store goods originating from outside the Indonesian customs area and/or goods from other places in the Indonesian customs area, which may be accompanied with one or more simple activities, for a certain period of time for later removal.

2. The operation of a Bonded Logistic Center is carried out by a Bonded Logistic Center operator having the status of an Indonesian legal entity and domiciled in Indonesia.
3. In one Bonded Logistic Center, one or more businesses may be conducted.
4. Business in a Bonded Logistic Center is conducted by:
 - a. a Bonded Logistic Center entrepreneur(s); or
 - b. a Bonded Logistic Center entrepreneur also acting as operator.
5. A Bonded Logistic Center entrepreneur can store imported goods or goods from other places in the Indonesian customs area for a certain period for later removal. The storing activity can be accompanied with one or more simple activities.

Customs and Tax Treatment

1. The following facilities are granted when goods from outside the Indonesian customs area enter into a Bonded Logistic Center:
 - a. postponement of import duty;
 - b. non-collection of Value Added Tax (VAT), Sales Tax on Luxury Goods and Article 22 income tax on import; and
 - c. exemption from excise duty.
2. The following facilities are granted when goods from other Bonded Logistic Centers enter into a Bonded Logistic Center:
 - a. postponement of import duty;
 - b. non-collection of VAT, Sales Tax on Luxury Goods and Article 22 income tax on import;
 - c. exemption from excise duty; and
 - d. non-collection of VAT or VAT and Sales Tax on Luxury Goods.
3. The following facilities are granted when goods from Bonded Storage Places other than a Bonded Logistic Center enter into a Bonded Logistic Center:
 - a. for goods which originate from outside the Indonesian customs:
 1. postponement of import duty;
 2. non-collection of VAT, Sales Tax on Luxury Goods and Article 22 income tax on import;
 3. exemption from excise duty; and

4. non-collection of VAT or VAT and Sales Tax on Luxury Goods.
- b. for goods which originate from other places in the Indonesian customs area:
 1. non-collection of VAT or VAT and Sales Tax on Luxury Goods.

4. The following facilities are granted when goods from Special Economic Zones, Free Trade Areas or other economic zones designated by the government enter into a Bonded Logistic Center:
 - a. for goods which originate outside the Indonesian customs area:
 1. postponement of import duty;
 2. non-collection of VAT, Sales Tax on Luxury Goods and Article 22 income tax on import;
 3. exemption from excise duty; and
 4. non-collection of VAT or VAT and Sales Tax on Luxury Goods.
 - b. for goods which originate from other places in the Indonesian customs area:
 1. non-collection of VAT or VAT and Sales Tax on Luxury Goods.
5. The entry of goods from other places in the Indonesian customs area into a Bonded Logistic Center where the goods are intended for export is granted non-collection of VAT or VAT and Sales Tax on Luxury Goods.
6. The following facilities are granted when a party enjoying custom/tax facilities moves goods from other places in the Indonesian customs area which originate from outside the Indonesian customs area into a Bonded Logistic Center for certain purposes:
 - a. postponement of import duty;
 - b. non-collection of VAT, Sales Tax on Luxury Goods and Article 22 income tax on import;
 - c. exemption from excise duty; and
 - d. non-collection of VAT or VAT and Sales Tax on Luxury Goods.
7. The following facilities are granted when a party enjoying custom/tax facilities moves goods from other places in the Indonesian customs area which originate from outside the Indonesian customs area into a Bonded Logistic Center for certain purposes:
 - a. postponement of import duty;
 - b. non-collection of VAT, Sales Tax on Luxury Goods and Article 22 income tax on import;
 - c. exemption from excise duty; and

- d. non-collection of VAT or VAT and Sales Tax on Luxury Goods.

Bonded Logistic Center Operator

1. The designation of a place as a Bonded Logistic Center and the issuance of a Bonded Logistic Center operator license for a certain period is stipulated by a Minister of Finance Decree.
2. To be designated as a Bonded Logistic Center and to obtain a license as a Bonded Logistic Center operator, a Bonded Logistic Center operator must fulfil the following requirements:
 - a. has evidence of ownership or possession of a zone, place or building that has clear boundaries, including a map of the location/place and layout plan/sketch of the place that will be used as the Bonded Logistic Center;
 - b. has a Business Location License (*Surat Izin Tempat Usaha*), environmental documents and other licenses that are required by the relevant technical agencies; and
 - c. has registered its business to be designated as Taxable Entrepreneur and has submitted the most recent Annual Income Corporate Tax , if required to do so.

Bonded Logistic Center Entrepreneur

To be licensed as a Bonded Logistic Center entrepreneur, an entrepreneur must fulfil the following requirements:

- a. has evidence of ownership or possession of a place or building that has clear boundaries, including a map of the location/place and layout plan/sketch;
- b. has a Business Trading License (*Surat Izin Usaha Perdagangan*) and other licenses that are required by the relevant technical agencies; and
- c. has registered its business to be designated as a Taxable Entrepreneur and has submitted the most recent Annual Income Corporate Tax return, if required to do so.

Release of Goods from a Bonded Logistic Center

Imported goods stored in a Bonded Logistic Center may be released to:

- a. support industrial activities at a Bonded Zone, Special Economic Zone, Free Trade Area and other economic zones designated by the government;
- b. support industrial activities in another Indonesian customs area;

- c. be placed into another Bonded Logistic Center, Bonded Warehouse and/or Duty Free Shops;
- d. be exported;
- e. support industrial activities which obtain the facility of import duty exemption; non-collection of VAT Sales Tax on Luxury Goods and Article 22 income tax on import; and refund of import duty pursuant to the prevailing laws and regulations on customs.
- f. support industrial activities which obtain import duty facilities borne by the government.

Major Changes

Regulation 85 also introduces the following changes:

1. Regulation 85 makes a slight change to the definition of Bonded Zone. Previously, a Bonded Zone was defined as a Bonded Storage Place to store imported goods and/or goods originating from other places in the Indonesian customs area to be processed or combined, **with its output primarily for export purposes.** Under Regulation 85, a Bonded Zone is now defined as a Bonded Storage Place to store imported goods and/or goods originating from other places in the Indonesian customs area to be processed or combined **before being exported or imported for use.**
2. Regulation 85 adds Special Economic Zones and Free Trade Areas as places of entry and release of goods to or from a Bonded Storage Place.

3. Goods entering a Bonded Warehouse, a Bonded Zone, a Bonded Exhibition Area, a Duty Free Shop and a Bonded Auction Place from outside the Indonesian customs area are now exempted from duty & excise. Previously, such goods were only entitled to import duty postponement and non-collection of VAT, Sales Tax on Luxury Goods and Article 22 income tax on import.
4. A duty free shop can now be located in the arrival terminal of an international airport in the Indonesian customs area. Previously, (in theory although not always been implemented consistently) a duty free shop could only be located in:
 - a. a departure terminal of an international airport in the Indonesian customs area;
 - b. a main seaport in the Indonesian customs area ;
 - c. a transit place in the departure terminal of an international airport which is a special place for overseas destined transiting passengers in the Indonesian customs area;
 - d. a main seaport which is a special place for overseas destined transiting passengers in the Indonesian customs area; and
 - e. cities.

Regulation 85 also adds the following new provisions:

1. Bonded Storage Place entrepreneurs are required to record the entry and release of goods by using a computer based information system.
2. The entry of goods originating from outside the Indonesian customs area to a Bonded Storage Place is not subject to import restrictions unless stated otherwise by the prevailing laws and regulations.
3. The release from a Bonded Storage Place of goods originating from outside the Indonesian customs area to be imported for use in another place in the Indonesian customs area is subject to import restrictions.

Differences between a Bonded Logistic Center, a Bonded Warehouse and a Bonded Zone

At the surface, a Bonded Logistic Center may seem similar to a Bonded Warehouse and one may question the differences between the two. The concept of a Bonded Logistics Center was introduced to expand the function of a Bonded Warehouse. A Bonded Warehouse itself is defined as a Bonded Storage Place to store imported goods, which may be accompanied with one or more activities such as packaging/re-packaging, sorting, kitting,

packing, adjusting or cutting of certain goods within a certain period for later removal. As you can see from the definition, packaging and other related activities may be conducted in a Bonded Warehouse. The function of a Bonded Logistic Center on the other hand is purely for storing imported or domestic goods for later removal.

We set out below 2 main advantages of a Bonded Logistic Center compared to a Bonded Warehouse:

1. Under the prevailing regulation on Bonded Warehouse, imported goods can be deposited in a Bonded Warehouse for a limited period of 1 year only as of the date of notice of import customs. While in a Bonded Logistic Center, goods can be store for up to 3 years.
2. A Bonded Warehouse can only store imported goods and is prohibited from storing goods from other areas. A Bonded Logistic Center, on the other hand, may store both imported goods and goods from other places in the Indonesian customs area. As such, the sources of materials which can be stored in a Bonded Warehouse does not necessarily need to originate from import but may originate from the Indonesian customs area as well.

As to the differences between a Bonded Logistic Center and a Bonded Zone, the most noticeable differences is that goods entering a Bonded Zone must be processed or combined. In other words, there must be some kind of an industrial activity in a Bonded Zone. While in a Bonded Logistic Center, there is no need for the goods to undergo any processing or combination activities.

Conclusion

Regulation 85 came into force on 25 November 2015. The introduction of a regulatory framework for Bonded Logistic Centers in Indonesia is crucial to reducing logistics costs in Indonesia, which have long been among the highest in the region due to poor transportation infrastructure. Businesses will likely welcome this breakthrough as companies setting up operations in Bonded Logistics Centers may enjoy a number of taxation facilities, i.e., they will be allowed to postpone import duty payment and be exempted from VAT, Sales Tax on Luxury Goods and excise duty.

C. New Regulation on Import of Used Capital Goods

As a general rule, Law No. 7 of 2014 on Trade ("**Trade Law**") provides that an importer can only import goods that are in a new

condition. There is, however, an exemption to this general rule under which used capital goods can be imported by certain companies under a specific approval from the Minister of Trade.

On 29 December 2015, the Minister of Trade issued a new regulation on the import of used capital goods, i.e., Minister of Trade Regulation No. 127/M-DAG/PER/12/2015 on Import Provisions for Used Capital Goods ("**Regulation 127**"). Regulation 127 replaces Minister of Trade Regulation No. 75/M-DAG/PER/12/2013 on the same matter ("**Previous Regulation**"), and came into force on 1 February 2016. Regulation 127 will remain valid until 31 December 2018.

Key Changes

Health Appliances Provider Companies Will No Longer be Able to Import Used Capital Goods

Under the Previous Regulation, only certain companies were permitted to import Used Capital Goods, i.e., Direct User Companies, Reconditioning Companies, Remanufacturing Companies and Health Appliances Provider Companies. Under Regulation 127, however, Health Appliances Provider Companies are removed from that list and can no longer import Used Capital Goods.

Imported Used Capital Goods Must Meet Certain Age Limitations

Under the Previous Regulation, the age limitation for the import of certain Used Capital Goods only applied for Used Capital Goods under HS Codes 84, 85 (motors and electric generators), 88 (hot air balloons, glides), 8901 (ships for transporting goods and people), 8902 (ships for catching and processing fish), 8903 (yachts and canoes), 8904 (towing ships), and 8905 (other ships including war ships), i.e., they must be a maximum of 20 years old.

Regulation 127 now requires almost all types of Used Capital Goods that can be imported by Direct User Companies, Reconditioning Companies and Remanufacturing Companies to meet certain age limitations ranging from a maximum of 15 years old to a maximum of 30 years old.

New Requirements for Obtaining an Import Approval

The requirements for obtaining an Import Approval are to some extent different than those under the Previous Regulation.

Although one or two documents are no longer required when applying for an Import Approval (e.g., a Taxpayer Identification Number (NPWP)), new requirements are also introduced such as the requirement to submit an import plan which covers a description of the goods, a 10 digit HS Code, the amount and unit of the goods, the loading country and the port of destination.

The Director of Import will issue Import Approvals within 5 working days from receipt of a complete application and Import Approvals are valid for a maximum of 1 year from their issue date.

Term of an Extended Import Approval

The Previous Regulation did not clearly mention the term of an extended Import Approval. It only stated that Import Approvals are valid for a maximum of 12 months from their issue date and may be extended once.

Regulation 127 now makes it clear that an extended Import Approval is valid for up to 60 days and can only be extended once. Further, Regulation 127 provides that an application to extend an Import Approval must be submitted at least 30 days prior to the expiry of the Import Approval.

Quarterly Report

Under the Previous Regulation, companies which had obtained Import Approvals of Used Capital Goods had to submit a realization report in writing to the Director of Import of the Ministry of Trade each month, at the latest on the 15th day of the following month.

Under Regulation 127, the obligation to submit a monthly report is now replaced with quarterly written reports, at the latest on the 15th day of the first month of the next quarter. The report must be submitted through <http://inatrade.kemendag.go.id> with a copy to the related technical agency.

Importation of Used Capital Goods Not Included in the List in the Attachment

Under the Previous Regulation, for the purpose of export development, increase of competitiveness, business efficiency, investment, industry relocation activities, infrastructure development, and/or for export purposes, Used Capital Goods not included in the attachment could be granted an Import Approval by the Director General of Foreign Trade of the Ministry of Trade. Moreover, Used Capital Goods not included in the attachment which are imported in a limited amount may be

considered to be granted an Import Approval by the Director General of Foreign Trade of the Ministry of Trade on a case-by-case basis after obtaining a recommendation from the competent authority in accordance with the prevailing laws and regulations.

Under Regulation 127, the provisions on the ability to import Used Capital Goods not included in the attachment have been removed. Consequently, it seems that it is no longer possible to import Used Capital Goods not included in the attachment.

Conclusion

It is still unclear why Health Appliances Provider Companies no longer can import Used Capital Goods. It appears, however, that the government is trying to restrict the importation of Used Capital Goods into Indonesia by strengthening the requirements, i.e., prohibiting Health Appliances Provider Companies from importing Used Capital Goods; imposing age limitations for almost all types of Used Capital Goods; and eliminating the possibility to import Used Capital Goods not included in the list of attachments.

Even though Regulation 127 provides no sanctions for importing Used Capital Goods without Import Approval, under the Trade Law, importers importing goods not in a new condition are subject to imprisonment for up to 5 years and/or a fine of up to IDR 5 billion.

D. The 10th Economic Package - Principles for the New Negative List

On 11 February 2016, the Government announced a 10th economic package ("**Announcement**"). The Announcement outlines the principles that will be adopted in the new President Regulation on Negative List of Investments in Indonesia ("**New Negative List**") (noting the President has been pushing for a speedy issue of the new Negative List). The New Negative List will replace the current list under Presidential Regulation No. 39 of 2014 ("**Current Negative List**").

Consequently the Announcement is not the Negative List itself. Until the New Negative List is issued, the Current Negative List still applies.

Given the Announcement covers broad categories and may not be exhaustive, it will be necessary to wait for the New Negative List itself to be officially issued for the details (including the relevant industry/business classification numbers) and for the concrete Government position on liberalizing further foreign investment.

Further we are aware that there are ongoing deliberations within the Government on certain issues and sectors and the result of these deliberations will be reflected in the New Negative List.

What the Announcement Says

1. The Government intends that the New Negative List is clearer for investors, namely it will include the following provisions:
 - a. defining the term of "partnership" which is a requirement for approximately 51 business lines;
 - b. ensuring business certainty by keeping the concept of "grandfathering" prior approvals;
 - c. ensuring that the relevant Ministries and Regional Governments comply with the provisions of the New Negative List; and
 - d. establishing a task force to accelerate investment and the export market (which will also be tasked to resolve quickly implementation issues when the New Negative List is issued).
2. The New Negative List will cover the same business sectors as the Current Negative List, i.e. 16 business sectors.
3. 35 business lines will be removed from the New Negative List, resulting in these business lines being open for 100% foreign ownership (please see Attachment 1).
4. The New Negative List will add 1 business line that will be closed for any investment for environmental preservation reasons, i.e. extraction and distribution of coral.
5. The New Negative List will provide more protection for micro, small, medium and cooperative businesses - small medium enterprises, which must be Indonesian owned ("**Local SME**"), by among other things:
 - a. reserving additional 19 business lines for Local SMEs - these business lines are generally related to construction consultancy with low or medium technology and project values of less than IDR10 billion -- for example, predesign and architecture consultancy services, architecture design services and contract administration services; previously foreign investment was permitted up to 55%;
 - b. increasing the project values of 39 business lines in the construction sector that are reserved for Local SMEs from IDR1 billion to IDR50 billion - essentially, this means foreign owned construction services companies can only qualify for projects with a value of over IDR50 billion; and

- c. adding 3 business lines that require a partnership with a Local SME, i.e., plantation seeding with an area of more than 25 ha, sugar industry (white sugar, refined sugar, raw sugar) and retail trading through mail order or the internet;
6. The Announcement requires that certain investment processes be simplified by:
 - a. removing, for 82 business lines, the need for specific recommendation requirements from the relevant Ministries - for example, accommodation services (hotels and motels), billiard halls, bowling alleys, golf courses, staple food plantation, plantation seeding and plantations above 25 ha; and
 - b. simplifying business lines categories. For example, there are 39 business lines for construction services (e.g., warehouse construction, building construction, building repair) which will be combined into 1 business line of "construction services".
7. The New Negative List will increase the permitted foreign investment in certain business lines:
 - a. 3 business lines will be increased from 33% to 67%;
 - b. 23 business lines will be increased from 49% to 67%;
 - c. 11 business lines will be increased from 51% to 67%;
 - d. 2 business lines will be increased from 65% to 67%;
 - e. 1 business line will be increased from 85% to 100%;
 - f. 5 business lines will be increased from 95% to 100%; and
 - g. 20 business lines currently not open to foreign investment will be opened in varying percentages.

Please see:

- i. Attachment 1, for the business lines that may be open completely for foreign investment (namely removing the business lines from the New Negative List); and
- ii. Attachment 2 for the business lines where increased foreign investment may be permitted.

Please note that the Announcement does not necessarily cover all areas that may be liberalized, nor should the Announcement nor the Attachments to this paper as being definitive, until the New Negative List is issued.

We have highlighted matters which are not specifically referred to in the Announcement. We have collated the information in the Attachments based on the broad categories referred to in the Announcement and also from various other sources and draft position papers however there are ongoing deliberations within

Government. Consequently the information in the Attachments needs to be read accordingly and is caveated that the information may well change.

Conclusion

Only time will tell whether the New Negative List will reflect fully the substance in the Attachments to this Client Alert. However domestic investors should consider whether, as a result of the proposed foreign investment liberalization, there are:

- a. any threats that may arise given increase in competition;
- b. any call options under which foreign shareholders may be entitled to exercise to increase their shareholdings in joint ventures.

As a result of the proposed foreign investment liberalization, foreign investors:

- c. may identify opportunities to invest in Indonesia given the additional liberalized sectors;
- d. may consider increasing their shareholdings in existing joint ventures (and for certain business lines this will allow consolidation), whether through negotiation or the exercise of call options;
- e. may consider it appropriate to remove the small shareholdings currently held by Indonesian investors (e.g. where foreign investment is open 100%).

The Government was initially targeting to issue the New Negative List in March or April 2016, however, until now it has not yet been issued.

- E. Ministry of Industry issues regulation on granting recommendations for importing complementary, test market and after sales goods

Introduction

On 22 March 2016, the Minister of Industry issued a new regulation on granting recommendations for importing complementary goods, goods for test market purposes and goods for after sale services. Under a Minister of Trade Regulation issued in 2015, API-P holders must secure a recommendation from the Minister of Industry in order to obtain an Import Approval from the Minister of Trade to import these types of goods. The new Minister of Industry regulation is therefore relevant to API-P holders that plan to import these types of goods.

What the regulation says

The new Minister of Industry regulation is Minister of Industry Regulation No. 19/M-IND/PER/3/2016 on Provisions for Granting of Recommendation for Importing Complementary Goods, Goods for Test Market Purposes and Goods for After Sale Services (“**Regulation 19**”). Regulation 19 mainly deals with obtaining a recommendation from the Ministry of Industry to secure an Import Approval from the Minister of Trade to import manufactured goods to be used as test market goods, complementary goods or goods for after-sales service.

Other provisions of Regulation 19 basically similar to the Minister of Trade regulation issued in 2015 mentioned above, i.e. Minister of Trade Regulation No. 118/M-DAG/PER/12/2015 on Import Provisions for Complementary Goods, Test Market Goods and Goods for After-Sales Service (“**Regulation 118**”).

Import Approval Limitation

Regulation 19 provides certain limitations on the quantity of goods and the maximum period of an Import Approval that will be given by the Minister of Trade. Specific information is provided for each category of goods stipulated in the attachment of Regulation 19. For example, the term of an Import Approval to import electronic goods for test market is limited to 2 years and the amount of electronic goods which can be imported is no more than 5% per year of the previous 2 years average production realization. Please contact us if you want a complete list of the attachments of Regulation 19.

Obtaining a Recommendation from the Minister of Industry

In order to obtain a recommendation from the Minister of Industry, which is required for an Import Approval application, API-P holders have to submit an application to the Minister of Industry cc. Director General of Industrial Supervision (*Direktur Jenderal Pembina Industri*) along with the following documents:

1. Copy of industrial business license or similar business license in industrial sector.
2. Copy of taxpayer registration number (NPWP).
3. Copy of API-P.

Specifically for test market goods, the API-P holders must also provide their investment and business plan in Indonesia.

For complementary goods, API-P holders must enclose a copy of evidence of a special relationship with their foreign affiliated

company which produces the complementary goods. The evidence can be in the following forms:

1. Agreement to share control over economic activities
2. Shareholding
3. Articles of association
4. Distributor/agency agreement
5. Loan agreement
6. Supplier agreement

The application for a recommendation should only be done through siinas.kemenperin.go.id online page, and in case of a force majeure (the page cannot be accessed), the application can be done manually. The Director General of Industrial Supervision will approve or reject the application within 5 working days after the submission of a complete set of documents.

The recommendation from the Ministry of Industry must at least contain information about the quantity, type, post tariff/HS Code and import period of the test market goods, complementary goods or goods for after-sales service.

Quarterly Report

API-P holders who have obtained a recommendation are required to submit reports on the implementation of import activities on a quarterly basis, through siinas.kemenperin.go.id online page at the latest on the 15th day of the first month of the next quarter.

Revocation of Recommendation

A recommendation can be revoked if the API-P holder:

1. fails to submit the import report through the online system twice;
2. is proven to have changed the data or information in the recommendation;
3. is proven to have submitted false or incorrect data or information as the requirement to obtain its recommendation after the issuance of the recommendation;
4. conducts violations in customs matters based on information from the Customs office; or
5. is found guilty of misuse of the recommendation by a legally binding court decision.

An API-P holder can re-apply for a recommendation 1 year after it is revoked.

Conclusion

Existing Producer Importer (PI) licenses (the previous name of Import Approval) that will expire before 30 June 2016 will remain valid until 30 June 2016. API-P holders can therefore consider applying for a recommendation from the Minister of Industry to obtain a new Import Approval from the Minister of Trade once their PI license has expired (or maybe before it expires), so API-P holders can keep importing finished goods. That being said, there may be some hiccups during the application process because further provisions on issuing a recommendation are to be provided in a Director General regulation which until now has not yet been issued.

F. Minister of Trade Issues New Regulation on Distributing Goods

On 28 March 2016, the Minister of Trade issued a new regulation on distributing goods, i.e., Minister of Trade Regulation No. 22/M-DAG/PER/3/2016 on General Provisions for Distributing Goods ("**Regulation 22**"). Regulation 22 replaces Decree of the Minister of Industry and Trade No. 23/MPP/Kep/1/1998 on Trading Entities ("**Decree 23**"). However, it does not revoke Ministry of Trade Regulation No. 11 of 2006 (11/M-DAG/PER/3/2006 - **Regulation 11**) on the registration of agencies and distributorship. Further, being a lower level regulation, it does not revoke Government Regulation No. 36 of 1977 (as amended) (GR 36/1977) on the trading activities of industrial (i.e. manufacturing) companies.

The background of the issuance of Regulation 22 is of course the issuance of the 2014 Trade Law which mandated the issuance of implementing regulations by October 2016. As such, Regulation 22 does not deviate from the general characteristics of the Trade Law, namely it mostly codifies the Ministry of Trade's policies that existed in 2014. Primarily, it follows the general tendency of the Ministry of Trade to break down the supply chain, to favour intermediaries by protecting their role. This general tendency continues although it does concede some innovations in favour of less intermediation (e.g. single level marketing, as discuss below).

Below, are our summary of some of the most interesting points of Regulation 22. The following section refers to articles of Regulation 22 if not specified otherwise:

1. On Whether Retailer is a Consumer
 - a. Regulation 22 has clarified that a retailer is classified as a trading institution that sells directly to consumers. It clarifies that retailers are not classified as consumers (Article 3.1). It now appears clear that sales by distributors

and wholesalers to retailers do not amount to retailing, ending a confusion that has been persisting for some years now.

2. On Sale of Merchandise and Supplies

- a. Regulation 22 now clearly provides that distributors and agents may supply directly to retailers - as a general rule (Article 6).
- b. On the other hand, Regulation 22 fails to clarify whether manufacturers (i.e. producers) and traders may sell consumable items directly to businesses, as distinct from selling raw and supporting materials that will be subsequently incorporated in the businesses' end products (as provided by GR 36/1977).
- c. Whereas Article 22 of Regulation 22 simply repeats the provision of GR 36/1977 which allows producers to sell raw and supporting materials directly to other producers, it does not contain any provision on direct sale from either producers or distributors or agents to businesses in general.
 - Although the Regulation 22 definition of "goods" (Article 1.1.) distinguishes between use of goods by "consumers" and "business actors" (i.e. businesses), it does not include any definition of "consumers". Thus one can still argue that purchase by a business of consumable items should mean that it acts as consumer in this instance. Also, Regulation 22 has deleted the category of "main supplier" which was defined by Decree 23 as wholesale of supplies direct to businesses. This may be taken as an indication that such direct sales are no longer allowed.
- d. In media reports, the Ministry of Trade is quoted as saying that importers and medium and large scale producers may still sell merchandise direct to retailers, provided that they have a distribution license. Unfortunately, this is an interpretation that is not clearly supported by the text of Regulation 22 as its Articles 7 and 19.4 clearly require producers to appoint distributors or agents and prohibit importers and distributors from selling to retailers. If we use the same logic, then it should also be possible for a distributor to concurrently act as a retailer as long as the distributor also holds a retailing license. This would not be in line with Article 19.1. which prohibits distributors and agents from selling directly to consumers.

3. On Distribution by distribution and import/wholesale foreign investment companies
 - a. Also, as Regulation 22 does not revoke Regulation 11, it leaves open the question whether a different rule applies to foreign investment distributors. One may still argue that a foreign investment distribution company cannot sell directly to retailers; that a foreign investment distribution company must appoint a local distributor or agent as an intermediary.
 - b. Article 20 prohibits an "importer" that is not also acting as a distributor from selling to retailers. This appears to support the current view that foreign investment "import/wholesaling" companies cannot resell directly, that they must appoint an intermediary (a local distributor or agent according to Regulation 11).
4. On Direct Retailing to Consumers
 - a. Regulation 22 now includes a new category of "single level marketing", which is defined as a variant of direct distribution, the other variant being "multi-level-marketing" ("MLM"). A separate ministerial decree will further clarify what this variant means, but considering its link to MLM and the elaboration of Article 7.3 of the Trade Law, it appears that single level marketing will also require a sales network similar to those of MLM. A sales network of independent (i.e. non-employees) sales persons that sign on to become members, governed by a commission or other compensation system, a code of ethics, etc., with one big difference that there is only one layer of intermediation between the supplier and consumers, as distinct from the multiple layers of an MLM. Of course, we have to wait for the Ministry of Trade to provide more clarity, but at the moment the Ministry of Trade appears to have direct sales to consumers by sales-persons (e.g. of books, learning materials) in mind when it includes this category.
5. On exemptions in general
 - a. Article 24 of Regulation 22 provides that goods subject to restriction or supervision will be separately regulated. This opens up the possibility that sensitive products may be subject to different rules altogether.

2. Export Controls

It is important to note that, in Indonesia, export activity is not highly regulated as import. The required license to conduct export is basically only the Customs Identification Number (NIK); provided that additional licenses may be required for certain types of goods which are restricted or limited to be exported. Until to date, we have not yet seen any significant regulation on export control.

In general export is regulated by Law No. 10 of 1995 as amended by Law No. 17 of 2006 on Customs Affairs ("**Customs Law**") and Ministry of Trade Regulation No. 13/M-DAG/PER/3/2012 on General Export Provisions ("**Regulation 13**"). Regulation 13 divides export goods to 3 categories:

- a. free to export;
- b. subject to export restriction; and
- c. subject to export prohibition.

Export controls are enforced by the Ministry of Finance through the Customs Office based on the recommendation or implementing regulations enacted by the technical ministries e.g. the Ministry of Industry and the Ministry of Trade. Most of current export controls regulate commodities, plantation, fishery, agriculture, forestry, mining products and flora and fauna.

Generally, Indonesia maintains export bans from time to time in compliance with the United Nations resolutions, including resolutions against terrorist organizations. However, there is no public list on companies or individuals with which transactions are restricted.

Article 112 of the Trade Law (Law No. 7 of 2014 on Trade) provides that exporters who export goods that are prohibited to be exported will be imposed with imprisonment of up to five years or a penalty of up to Rp.5,000,000,000.

3. WTO/FTA

A. Indonesia intends to join TPP

President Joko Widodo has indicated that Indonesia intends to join the U.S.-led Trans-Pacific Partnership (TPP), during his inaugural visit to Washington, D.C. last October. The TPP currently groups the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.

But President Jokowi's plan is not without its challenges. Whether Indonesia should join the TPP is a topic of debate among the public.

Berly Martawardaya, an economist with the Institute for Development of Economic and Finance (INDEF), said that out of the 12 current members of the TPP, all of them had formed free trade agreements with Indonesia, except the US, Canada, Mexico and Peru. Based on Trade Ministry data, Indonesia's total trade with those countries -except the US- is not significant.¹ In 2014, the share of total trade with Canada was just 1.38 percent, while with Mexico and Peru 0.55 percent and 0.15 percent, and the US 13.04 percent.²

Former coordinating finance and industry minister Ginandjar Kartasasmita said that Indonesia had sufficient FTAs to reach its export targets, namely the ASEAN Free Trade Area, ASEAN-China, ASEAN-India, ASEAN-Japan, ASEAN-South Korea and the future the Regional Comprehensive Economic Partnership (RCEP), which will facilitate free trade among ASEAN+6 (China, Japan, South Korea, India, Australia, New Zealand)³. According to Ginandjar, rather than joining the TPP, it would be better if Indonesia focused on RCEP, in which Indonesia had a bigger role.⁴

Indonesia for Global Justice (IGJ) is of the view that Indonesia's bargaining power will become weak if it joins the TPP after the TPP is agreed upon by 12 countries.⁵ Such a weak bargaining position will result in Indonesia having no choice other than agreeing to the standards already set previously.⁶

The debate around the TPP also centers on Indonesia's readiness to observe the many and diverse standards required by the binding agreement. The TPP is wide ranging, covering not only trade but also intellectual property rights, food safety, state owned enterprise sector reform, environmental protection, financial regulation, and more. These regulatory areas are not new for Indonesia but in some cases the rules in place are not as sophisticated as the TPP requires.

There are also persisting concerns about how long it will take Indonesia to get on board. Thomas Lembong, the country's trade minister, said that it will take roughly two years to get TPP ratified by the People's Consultative Assembly.⁷

¹ State-enterprises under threat if Indonesia joins TPP, the Jakarta Post, November 29 2015

² Ibid

³ State-enterprises under threat if Indonesia joins TPP, the Jakarta Post, November 29 2015

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Why Indonesia Joining the TPP Would be a Good Thing, The Diplomat, December 05 2015

In terms of possible advantages for Indonesia, while it is one of the most populous countries in the world with one of the fastest growing economies, its purchasing power is not as strong as that of many developed countries.

On the other hand, there is also concern about how not being in the TPP will harm Indonesia by giving a place to its competitors in export markets, i.e. Malaysia, Brunei, Singapore and Vietnam have all signed the TPP.

B. Indonesia is ready to ratify the WTO multilateral Trade Facilitation Agreement (TFA)

Negotiations on the TFA, which aims to ease customs procedures and facilitate the movement, release and clearance of goods, were concluded at the WTO Bali Ministerial Conference in December 2013.

According to Trade Ministry director general for international trade negotiations, Imam Pambagyo, the TFA is still in the process of ratification and hopefully it can be immediately included in the National Legislation Program.⁸

TFA contains 40 technical measures that signatory nations are required to implement in order to reduce trade costs. Each member is also obliged to publish all information regarding procedures, regulations, fees and charges on the internet. The agreement covers special provisions to developing countries as well as least-developed countries, which allows them to implement the agreement based on their own assessment, including technical assistance and support for capacity building. However, to make the agreement obligatory, two-thirds, or 107 of the 161 WTO members of WTO members, must ratify it.

Commerce

Indonesia

1. **Ministry of Communications and Informatics Issues Circular Letter and Draft Regulation on Over-the-Top - "OTT" Service Providers**

The Ministry of Communications and Informatics ("**MOCI**") has issued a Circular Letter No. 3/2016 dated 31 March 2016 on the Delivery of Application and/or Content services through internet (Over The Top) ("**OTT Circular Letter**").

⁸ Indonesia to ratify WTO trade facilitation agreement, Jakarta Post, April 13 2016

The OTT Circular Letter clearly states that the purpose of the OTT Circular Letter is to alert all OTT Service Providers and Telecommunication Operators that they need to prepare themselves to comply with the upcoming OTT Regulation when the regulation comes into force, and to provide notice on what the contents of the regulation will be.

Following the issuance of the OTT Circular Letter, in early May 2016, MOCI finally issued a draft of the proposed OTT Regulation for public comments. Being only a 14 page document (with 18 articles which includes some boilerplate), there is not much more substance than was in the OTT Circular Letter.

What is covered?

Essentially OTT Services delivered over the internet, whether onshore or offshore, in the form of Application Services and Content Services are to be regulated. Application Services and Content Services are defined as (note the translation is rudimentary):

1. Application Services over the Internet is the use of software that allows the service communication in the form of short messages, call voice, video calls, electronic mail, and conversation online (chat / instant messaging), as well as service financial transactions, commercial transactions, storage and data retrieval, search engines, games (games), networking and social media, including derivatives with take advantage of internet access services through the organizer telecommunications network.
2. Content Services over the Internet is the provision digital information that can be shaped text, voice, images, animations, music, videos, movies, games (games) or a combination of any and / or all of them, including in the form of streamed (streaming) or downloadable (download) to utilize the services access Internet via telecommunication networks.

Regulation Scope

While detail is short the Draft OTT Regulation covers:

- a. OTT service provision;
- b. contact center information;
- c. data storage;
- d. compensation;
- e. monitoring and control; and
- f. sanctions.

Principles

The principles in the Draft OTT Regulation are:

- a. article 4: offshore providers should have an establishment in Indonesia, whether an entity in which case this becomes onshore or a BUT;
- b. article 4.5: for new services, registration must be done 30 days before providing services;
- c. article 5: service providers must comply with all aspects of Indonesian law (15 areas are listed, including in broadcasting, film, consumer protection, competition and trade practices, taxation etc) and
 - a) ensure data protection is given;
 - b) filter content and comply with censorship and other requirements;
 - c) only use the national gateway system for payments;
 - d) have an Indonesian internet protocol number;
 - e) have data centres in Indonesia;
 - f) allow law enforcement access;
 - g) specific Indonesian terms and conditions (complying with Indonesian law);
- d. article 6: service providers need to ensure that material conforms with certain Indonesian principles – including restrictions on or complying with decency, gambling, religious issues, hate speech, non-infringement IP rights, material affecting the integrity of Indonesia etc etc etc. Breaches of these laws will be dealt in accordance with these laws.
- e. article 7: service providers must cooperate and have written arrangements with telecommunication service providers (which must be reported to the regulator);
- f. article 8: service providers must have a contact centre and complaints must be addressed within 24 hours;
- g. article 9: service providers must store information for 3 months and provide access to law enforcement;
- h. article 10: consumers/users have rights to compensation for any direct losses;
- i. article 12: service providers must submit reports every year on the number of consumers/users and traffic statistics;

- j. article 13: sanctions for certain breaches (e.g. articles 4, 5, 7.3, 8, 9 and 12) will effectively result in broadband management restrictions (this principle is not clear, as to whether this means actual blocking of sites).
- k. article 16: For existing service providers there will be a period of 9 months to comply with the regulation.

Much of the above would be detailed in further regulation and circular letters.

BUT or Local Subsidiary

The Draft OTT Regulation does not address the issue of foreign investment, so the general rules (including the permitted foreign investment percentage) will apply and what can be achieved will depend on the nature of the business line. This will determine whether a foreign OTT provider can come onshore and establish a company or will need to have a BUT (which may be subject to higher tax rates).

Liberalizing foreign investment restrictions will be a key issue, and there has been no discussion on this issue to our knowledge (noting that the proposed new Negative List on Investments has not yet issued).

2. Draft Bill of E-Commerce

As mandated under the Trade Law, the Government prepared a draft of a Government Regulation on e-commerce ("**Draft GR**") as an implementing regulation of the Trade Law.

The followings are key provisions of the Draft GR issued last year:

- a. Article 18 of the Draft GR provides that business actors who want to conduct e-commerce activities must first be registered as an e-commerce business actor at the relevant Ministry. Business actors according to Article 11 of the Draft GR include merchants, e-commerce organizers ("**PTPMSE**") and intermediary organizers. Merchants and intermediary organizers can be individuals or legal entities. However, e-commerce organizers must be Indonesian legal entities.
- b. The Draft GR is inconsistent on the PTPMSE's legal form. Under Article 12 (2) of the Draft GR, a PTPMSE must be an Indonesian legal entity. However, Article 18 (4) explicitly states that a foreign PTPMSE may engage in business in Indonesia, without requiring it to be established as an

Indonesian legal entity (although a specific license from the relevant Ministry is required).

- c. Note that according to Articles 13 and 15 of the Draft GR, offshore merchants, e-commerce organizers and intermediary organizers who conduct e-commerce with Indonesian consumers are deemed to be doing business operations in Indonesia, and must comply with Indonesian laws and regulations. Any offshore business actors who violate this provision would be listed in a surveillance priority list, which can be accessed by public.
- d. Article 27 of the Draft GR provides that a PTPMSE or an intermediary organizer is responsible for any losses resulting from illegal content in their services, unless the PTPMSE immediately removes the relevant electronic link after it becomes aware of such condition, and in the case of an intermediary organizer unless the intermediary organizer is only acting as an intermediary to convey information between the seller and the buyer (does not initiate, verify, or modify any information).
- e. Based on Article 50 of the Draft GR, an e-commerce consensus to transact is considered established if the buyer accepts the seller's/PTPSME's offer, and the acceptance is consistent with the mechanism and technical, substantial, and conditional requirements stated in the offer. There is no agreement if the acceptance does not match with the offer. Moreover, under Article 71 of the Draft GR, an e-commerce transaction contract will be valid and binds the parties if (i) it is in accordance with the terms and conditions stipulated in the electronic offer, (ii) information stated in the transaction contract is in accordance with the electronic offer, and (iii) the terms and conditions of the offers are accepted by the party who received the offer.
- f. Under Article 59 of the Draft GR, payment for e-commerce transactions can be conducted through banking payment systems or another electronic system. A PTPSME may also engage another entity to provide the electronic payment system.
- g. Articles 64 and 65 of the Draft GR provide that if there is a dispute on the timing of delivery of the purchased goods due to inconsistency of the actual delivery with the agreed delivery time, the business actors must settle such dispute. Further, if the delivery of goods is conducted by a PTPMSE and there is a dispute on timing as above, the PTPMSE must settle such dispute.

- h. Under Article 77 of the Draft GR, a seller and PTPMSE must provide buyers at least two days to change or cancel a purchase if: (i) the goods do not match the description; (ii) there is a defect or damage to the goods; and (iii) the goods have expired.
- i. Under Article 68 of the Draft GR, business actors that perform e-commerce transactions with Indonesian consumers are considered to have conducted physical trading activities in Indonesia. E-commerce transactions are subject to all taxation obligations under prevailing laws and regulations.

3. Cyber Security and Data privacy Data Privacy

In October 2015, the Government issued a new draft Data Protection Law (Draft Law). The Draft Law has a broader coverage of personal data as it also covers non-electronic data while Law No. 11 of 2008 on Electronic Information and Transaction ("**EIT Law**") and Government Regulation No. 82 of 2012 on the Implementation of Electronic Systems and Transactions ("**Regulation 82**") only cover electronic data. Before that, the Ministry of Communications and Informatics circulated a draft Ministerial Regulation on Data Protection for public comments (Draft Regulation). Unfortunately, at this stage, it is still unclear as to when these Draft Law and Draft Regulation will be issued.

According to the EIT Law and Regulation 82, any use of personal data (e.g. data collection, transfer, process, disclosure) through electronic media may only be done with proper prior consent from the relevant data owners.

Although there are no specific requirements on consent form or how to obtain the consent under EIT Law and Regulation 82. To be prudent, it is advisable to obtain an express or opt-in consent, as generally negative or opt-out consent could be challenged in Indonesia.

Electronic Signature

1. Electronic signatures are recognized under the EIT Law and Regulation 82. The EIT Law and Regulation 82 define an electronic signature as all forms of electronic information functioning as a means of verification or authentication, including digital signatures or acceptance confirmations.
2. Further, Regulation 82 recognizes 2 types of electronic signature namely (i) certified and (ii) uncertified. There is no mandatory requirement to have a certified electronic signature.

3. The EIT Law and Regulation 82 provide that an electronic signature is only valid if all of the following conditions are met:
 - a. Data to make the relevant electronic signature only relates to the signatory (e.g., signatory's name, mother's maiden name, identification number and date of birth).
 - b. Data to make the electronic signature is fully within the signatory's ability to provide.
 - c. All changes in the electronic signature and its electronic information made after the signing can be identified.
 - d. There is a certain way to identify the signatory.
 - e. There is a certain way to identify that the signatory has consented to the information on the electronic signature.

It should be noted however, that while electronic signatures are regulated and courts are meant to accept electronic contracts as evidence under the EIT Law and Regulation 82, the courts have been slow to do so.

A company should note that best practice in Indonesia is also to include in an agreement that electronic signatures are agreed by parties. Please also note that for filing purposes (as applicable), some government entities may still require a hard copy document that has been signed manually or a printout of the relevant electronic document.

So while the law allows electronic signatures, government practice is yet to accept fully such signatures.

Attachment 1
Liberalized Lines of Business

No	Sector	Lines of Business	Previously	Proposed Change
1.	Industry	Crumb rubber industry	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment
2.	Trade	Cold storage	Limited to (i) 33% foreign investment in Sumatra, Java and Bali and (ii) 67% foreign investment in Kalimantan, Sulawesi, Nusa Tenggara, Maluku and Papua	Open 100% foreign investment
3.		Direct selling	Limited to 95% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
4.		Futures broker	Limited to 95% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
5.	Tourism and Creative Economy	Restaurants	Limited to 51% foreign investment	Open 100% foreign investment
6.		Bars	Limited to 49% foreign investment or 51% if in partnership with Small Medium Enterprises (SMEs)	Open 100% foreign investment
7.		Cafes	Limited to 49% foreign investment or 51% if in partnership with SMEs	Open 100% foreign investment
8.		Sport centers	Limited to 49% foreign investment or 51% if in partnership with SMEs	Open 100% foreign investment
9.		Film industry generally (including film distribution)	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment
10.		Film studio	Limited to 49% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
11.	Tourism and Creative Economy	Film Processing Laboratories	Limited to 49% foreign investment	Open 100% foreign investment

No	Sector	Lines of Business	Previously	Proposed Change
12.		Film dubbing facilities	Limited to 49% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
13.	Tourism and Creative Economy	Film printing or duplication facilities	Limited to 49% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
14.		Film editing facilities	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment - Not referred to in the Announcement but a possible change
15.		Film subtitling facilities	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment - Not referred to in the Announcement but a possible change
16.		Film production	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment - Not referred to in the Announcement but a possible change
17.		Movie theatre	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment - Not referred to in the Announcement but a possible change
18.		Recording studio (cassettes, VCDs, DVDs, etc.)	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment - Not referred to in the Announcement but a possible change
19.	Communication and Informatics	E-commerce and marketplace platforms with an investment of more than IDR100 billion	Not regulated	Open 100% foreign investment
20.		Telecommunication equipment testing laboratories	Limited to 95% foreign investment	Open 100% foreign investment
21.	Communication and Informatics	Phone booth	Reserved for SMEs	Open 100% foreign investment - Not referred to in the Announcement but a possible change
22.	Public Works	Toll roads	Limited to 95% foreign investment	Open 100% foreign investment
23.		Non-hazardous waste management	Limited to 95% foreign investment	Open 100% foreign investment

No	Sector	Lines of Business	Previously	Proposed Change
24.	Health	Raw pharmaceutical materials industry	Limited to 85% foreign investment	Open 100% foreign investment
25.		Business management consultancy services or hospital management services	Limited to 67% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
26.	Health	Diagnostic service facilities (clinic laboratory and radiology)	Limited to 67% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
27.		Healthcare equipment industry Class B (surgery masks, syringes, monitors for patients, condoms, surgical gloves, hemodialysis fluid, PACS, surgical knives) Class C (catheters, x-ray, ECG, monitors for patients, orthopedic implants, contact lens, oximeter, densitometer) Class D (CT Scan, MRI, heart catheters, HIV test, pacemakers,	Not regulated	Open 100% foreign investment - Not referred to in the Announcement but a possible change

No	Sector	Lines of Business	Previously	Proposed Change
		dermal fillers, ablation catheters)		
28.	Health	Healthcare research center	Closed for foreign investment (100% domestic ownership)	Open 100% foreign investment - Not referred to in the Announcement but a possible change
29.		Healthcare support services (medical equipment lease)	Limited to 49% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
30.		Healthcare support services (laboratory clinic)	Limited to 67% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
31.		Healthcare support services (medical check up clinic)	Limited to 67% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
32.	Transportation	Salvage services and/or underwater works	Limited to 49% foreign investment	Open 100% foreign investment - Not referred to in the Announcement but a possible change
33.	Energy and Mineral Resources	Renewable energy power plants	Generally power plants are limited to 49% foreign investment	Open for foreign investment (the limitation is still unclear) - Not referred to in the Announcement but a possible change
34.	Finance	Security business (in the sense of financing)	Not regulated	Open for foreign investment (the limitation is still unclear) - Not referred to in the Announcement but a possible change

Attachment 2
Lines of Business With Increased Permitted Foreign Shareholding

No	Sector	Lines of Business	Previously	Proposed Change
1.	Trade	Distribution	Limited to 33% foreign investment	Limited to 67% foreign investment
2.		Warehouses	Limited to 33% foreign investment	Limited to 67% foreign investment
3.		Department Store less than 2,000 m2	Closed for foreign investment (100% domestic ownership)	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
4.	Manpower and Transmigration	Work training	Limited to 49% foreign investment	Limited to 67% foreign investment
5.	Tourism and Creative Economy	Travel bureaus	Limited to 49% foreign investment	Limited to 67% foreign investment
6.		Golf courses	Limited to: (i) 49% foreign investment or 51% if in partnership with SMEs; (ii) 100% for investors from ASEAN member states and located outside Java island and Bali; or (iii) 70% for investors from ASEAN member States and located in Java island and Bali	Limited to 67% foreign investment or limited to 70% for investors from ASEAN member States - Not referred to in the Announcement but a possible change
7.		Private museums	Limited to 51% foreign	Limited to 67% foreign investment

No	Sector	Lines of Business	Previously	Proposed Change
8.		Food (catering) services	Limited to 51% foreign investment	Limited to 67% foreign investment or limited to 70% for investors from ASEAN member States - Not referred to in the Announcement but a possible change
9.		MICE (Meeting, Incentive, Conference, and Exhibition) services	Limited to 51% foreign investment	Maximum 67% foreign investment or limited to 70% for investors from ASEAN member States - Not referred to in the Announcement but a possible change
10.	Tourism and Creative Economy	Historical sites managed by private entities	Limited to 51% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
11.		1-star hotels	Limited to 51% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
12.		2-star hotels	Limited to 51% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
13.		Non-star hotels	Limited to 51% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
14.		Sports centers (billiards, bowling, fitness, other sport activities)	Limited to 49% foreign investment or 51% foreign investment if in partnership with SMEs	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
15.		Art impresario services	Limited to 49% foreign investment or 51% foreign investment if in partnership with SMEs	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
16.		Karaoke bars	Limited to 49% foreign investment or 51% foreign	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change

No	Sector	Lines of Business	Previously	Proposed Change
			investment if in partnership with SMEs	
17.		Natural tourist attractions outside conservation areas	Limited to 51% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
18.		Spas	Limited to 51% foreign investment	Limited to 70% for investors from ASEAN member States - Not referred to in the Announcement but a possible change
19.		Other accommodation services (motel)	Limited to (i) 49% foreign investment or 51% if in partnership with SMEs or (ii) 70% if located in Java island and Bali	Limited to 70% for investors from ASEAN member States - Not referred to in the Announcement but a possible change
20.	Transportation	Air transportation supporting services	Limited to 49% foreign investment	Limited to 67% foreign investment
21.		Land transportation for passengers	Closed for foreign investment (100% domestic ownership)	Limited to 49% foreign investment
22.		Terminal supporting	Limited to 49% foreign	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
23.		Cargo handling	Limited to (i) 49% foreign investment or (ii) 60% for	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change

No	Sector	Lines of Business	Previously	Proposed Change
			investors from ASEAN member States	
24.		Transportation management services	Limited to 49% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
25.		Air cargo expedition services	Limited to 49% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
26.		General sales agent for foreign airlines	Limited to 49% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
27.		Management of crossing ports	Cooperation with a company appointed by the Government	Limited to 49% foreign investment - Not referred to in the Announcement but a possible change
28.		Management of river and lake ports	Cooperation with a company appointed by the Government	Limited to 49% foreign investment - Not referred to in the Announcement but a possible change
29.		Port facilities (jetty, building, cargo, handling terminal, liquid and dry bulk terminals, Ro-Ro terminal).	Limited to (i) 49% foreign investment or (ii) 95% foreign ownership with a public private partnership arrangement.	Limited to 49% foreign investment - Not referred to in the Announcement but a possible change
30.	Communication and Informatics	Integrated telecommunication network providers	Limited to 65% foreign investment	Limited to 67% foreign investment
31.	Public Works	Construction consultancy services with project values over IDR10 billion	Limited to 55% foreign investment	Limited to 67% foreign investment
32.	Energy and Mineral Resources	Extra-high voltage installation	Closed for foreign investment (100% domestic ownership)	Limited to 49% foreign investment
33.		Examining and testing high	Closed for foreign investment (100% domestic ownership)	Limited to 49% foreign investment - Not referred to in the Announcement but a possible change

No	Sector	Lines of Business	Previously	Proposed Change
		voltage/extra high voltage electricity utilization installations		
34.		Geothermal power plants ≤ 10 MW	Not specifically regulated. Generally, small scale power plants (1 - 10 MW) are limited to 49% foreign investment	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
35.	Health	Healthcare support services	Closed for foreign investment (100% domestic ownership) or maximum 49% foreign investment if throughout Indonesia	Limited to 67% foreign investment
36.		Class A healthcare equipment industry (diapers)	Not regulated	Limited to 33% foreign investment subject to specific licensing requirements - Not referred to in the Announcement but a possible change
37.		Healthcare equipment supplier	Not regulated	Limited to 49% foreign investment subject to specific licensing requirements - Not referred to in the Announcement but a possible change
38.		Healthcare equipment testing	Not specifically regulated. Generally, calibration testing, maintenance and reparation of healthcare equipment business line is limited to 49% foreign investment	Limited to 49% foreign investment subject to specific licensing requirements - Not referred to in the Announcement but a possible change
39.		Hospitals	Limited to (i) 67% foreign investment if throughout Indonesia or (ii) 70 % foreign investment if in capital cities of eastern part of Indonesia (save	Limited to 67% foreign investment- Not referred to in the Announcement but a possible change

No	Sector	Lines of Business	Previously	Proposed Change
			for Makassar and Manado)	
40.		Specialized medical clinics,	Limited to (i) 67% foreign investment if throughout Indonesia or (ii) 70% foreign investment if in capital cities of eastern part of Indonesia (save for Makassar and Manado)	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
41.	Health	Specialized dental clinics	Limited to (i) 67% foreign investment if throughout Indonesia or (ii) 70 % foreign investment if in capital cities of eastern part of Indonesia (save for Makassar and Manado)	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
42.		Specialized nursing clinics	Limited to (i) 49% foreign investment throughout Indonesia, (ii) 51% foreign investment in Makassar and Manado or (ii) 70 % foreign investment in capital cities of eastern part of Indonesia	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
43.		Other hospital services (mental rehabilitation clinics)	Limited to 67% foreign investment throughout Indonesia	Limited to 67% foreign investment - Not referred to in the Announcement but a possible change
44.		Stem cell banks and laboratories	Not regulated	Special licensing requirements - Not referred to in the Announcement but a possible change

