

## Client Alert

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### Draft Omnibus Law Simplifies (Again) the Business Licensing Processes

In September 2019, several news outlets reported that the government of the Republic of Indonesia was preparing a new law that would regulate several provisions in various industry sectors in one law, with a view to strengthening the Indonesian economy, increasing competitiveness and creating jobs. This is the first time that the government has initiated this type of law, known as an omnibus law. The omnibus law addresses various issues, which we discuss in another client alert [here](#), and another one [here](#) that discusses implications for the education sector.

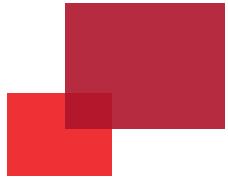
This client alert addresses the key changes made to improve the ease of doing business in Indonesia set out in the draft of the job creation law ("Draft"). Some notable provisions are as follows:

- **Improved ease of doing business:** To improve the ease of doing business, the Draft (i) introduces a new concept of risk-based business licensing, and (ii) simplifies business licensing and land acquisition processes, sectoral business licensing processes, and investment requirements.
- **Risk-based business licensing:** Risk-based business licensing is applied by determining the risk level of business activities, generally counted based on the hazard level (*perhitungan nilai tingkat bahaya*) and the potential hazard value (*nilai potensi terjadinya bahaya*). From this, the business activities are divided into three categories, which will be further regulated in implementing regulations:
  1. low-risk business activities, which would only be required to have a business identity number ("NIB") to operate
  2. medium-risk business activities, which would be required to have an NIB and standard certification (a statement of fulfillment of the requirements to operate the business activities) to operate
  3. high-risk business activities, which would be required to have an NIB and a business license to operate

The supervision of the business activities will also be addressed in the implementing regulations.

This is one of the major changes introduced by the Draft and it remains to be seen how the government will anticipate the needs of business actors, in particular foreign investors, to have legal certainty during the licensing process as well as during the commercial stage due to this change.

- **Simplified business licensing processes and land acquisition processes:** The business licensing processes and land acquisition processes are simplified through:
  1. ensuring suitability between the business activities and spatial use, which would be done by ensuring conformity between the location plan of the activities and/or business and the spatial plan  
The Draft requires the spatial plan prepared by local governments to be integrated with the Online Single Submission (OSS) system. This is to grant business actors easier access to the plan. This requirement may also lead to a standardization of the spatial plan prepared by each local government.
  2. simplifying procedures to obtain environmental approvals, with the amendment or deletion of some existing regulations, and introduction of new regulations
  3. simplifying procedures to obtain building approvals and function worthiness certificates (*sertifikat layak fungsional*), with the amendment or deletion of some existing regulations, and introduction of new regulations
- **Simplified sectoral business licensing processes and investment requirements:** Some existing regulations at the sectoral level will be amended. Stay alert for our subsequent client alerts covering specific key changes in several sectors.
- **Foreign investment restrictions:** The Draft amends some provisions in the Indonesian Investment Law. For example, the amended provisions in the Draft state that all business activities are either open or closed for capital investment (including foreign investment), or can only be conducted by the central government. Hence, the Draft seems to suggest the following:
  1. There will be no business activities that are open for capital investment (including foreign investment), but are subject to certain requirements, as currently stated in the Indonesian Investment Law. Please note that the current regulation provides, among other things, that (i) some lines of businesses are open for foreign investment, but would need to be conducted in specific locations, and (ii) some lines of business are only open partially for foreign investment.  
Point 1 (i) is supported by the provisions in the Draft that remove certain requirements in the existing laws, e.g., foreign investors are subject to certain limitations, other than share ownership. For example, the current Indonesian Postal Law provides that foreign investment companies engaged in postal business must fulfill



certain requirements, including that they can only operate in certain locations as stipulated in the law.

Point 1 (ii) as described above is supported by the provisions in the Draft that remove certain provisions in the existing laws that foreign investors can only own shares up to a certain percentage threshold. For example:

1. The current Indonesian Horticulture Law provides that companies engaged in large horticulture businesses are only open for foreign ownership up to 30%.
2. The current Indonesian Aviation Law provides that the share ownership of an Indonesian investor in a company engaged in aviation business must be higher than the foreign investor's.
3. The current Indonesian Broadcasting Law provides that companies engaged in broadcasting business are only open for foreign ownership up to 20%.
2. Local governments would not be allowed to have any investment at all (which would impact on the existence of regional-owned enterprises).

It remains to be seen how the central government will implement the changes introduced in the Draft. As with the existing Indonesian Investment Law, the Draft requires the central government to issue a presidential regulation to regulate capital investment requirements. We suspect that the practice anticipated by the Draft would be the same as the current practice, i.e., a list similar to the current Negative List will be attached to the presidential regulation.

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