

OMNIBUS LAW ON JOB CREATION: NEW OPPORTUNITIES FOR INVESTMENT

Prior to the enactment of Law No. 11 of 2020 on Job Creation ("Job Creation Act"), policies on investment spread across various sectoral and regional regulations, leading to overlapping policies and uncertainty for investors. As an effort to align those policies and create a main reference for investment policies, the Government of Indonesia has issued the Job Creation Act, which amends the Investment Act Law No. 25 of 2007 ("Investment Act") and other sectoral laws.

Further, to encourage more investment into Indonesia, the Job Creation Act offers less restrictive provisions on investment with the purpose of supporting the ease of doing business in Indonesia and creating new jobs as the result of more investment coming into Indonesia, among others by setting a list of sectors that are: (a) open for investment, (b) closed for investment and (c) only open to be managed by the central government in the amendment to Investment Act.

In this article, we will highlight the main changes to the Investment Act.

What's New?

1) Business Sectors Open and Closed for Investment

In the Job Creation Act, the government reduced the number of sectors that are closed to investment to 6 (six) business sectors from the 20 (twenty) business sectors closed for investment which were stated in Presidential Regulation No. 44 of 2016 concerning List of Business Fields Closed and Business Fields Open with Requirements in the Field of Investment, or known as the negative investment list ("Negative Investment List"). Meanwhile, the other business sectors that are not closed for investment under the Job Creation Act have now become business sectors that are open for investment and business sectors that will be exclusively managed by the central government.

Below is a list of some of the business sectors that are regulated in the Job Creation Act:

- a. several business sectors that were previously closed for foreign investment, are now open for investment, among others:
 - a) lifting of valuable artefacts from shipwrecks;
 - b) manufacturing of active pesticides: DichloroDiphenylTrichloroethane (DDT), Aldrin, Endrin, Dieldrin, Chlordane, Heptachlor, Mirex, and Toxaphene;
 - c) alcoholic hard liquor manufacturing;



- d) alcoholic beverages manufacturing: Wine;
- e) malt beverages manufacturing;
- f) organization and operation of terminals for passenger land transport;
- g) organization and operation of motor vehicle weigh stations;
- h) administration of testing of types of motor vehicles; and
- i) management and operation of the radio frequency spectrum and satellite orbit monitoring stations.
- b. several business sectors that are stated as closed for investment in the Negative Investment List have been restated without changes in the Job Creation Act and therefore still remain closed for investment in the Job Creation Act, among others:
 - a) catching of fish species listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and
 - b) utilization (collection) of natural coral for construction materials/lime/calcium, aquarium, and souvenirs/jewelry as well as natural living coral or dead coral (recently dead coral);
 - c. several business sectors that are stated as closed for investment in Negative Investment List have been restated as closed for investment with broader wording in the Job Creation Act, among others:
 - a) cultivation and manufacturing of Type 1 narcotics ;
 - b) manufacturing of industrial chemicals and ozone depleting substances;
 - c) chemical weapons manufacturing;
 - d) all types of gambling/casinos;
 - d. several business sectors previously declared closed to investment under the Investment Act and Negative Investment List can only be carried out by the Central Government under the Job Creation Act:
 - a) telecommunication/aids to shipping and vessel navigation;

- b) provision of air navigation services;
- c) public museums;
- d) historical and archaeological remains; and
- e) primary devices for weapons systems.

Moreover, the Job Creation Act provides changes to the regulations regarding manufacturing of weapons as briefly explained below:

- a. non-chemical weapons, gunpowder, explosives and war materiel is no longer an industry that is closed for investment and, therefore, it can be inferred that it is now classified an industry that is open for investment (including foreign investment); and
- b. major weapons manufacturing can be carried out by private enterprise (and therefore is open for foreign investment), to the extent that the privately owned enterprise: (i) obtains an approval from the Government of Indonesia as represented by the Ministry of Defense of the Republic of Indonesia and (ii) fulfils investment requirements to be determined by a presidential regulation.

Which business sectors are open, closed and conditionally open is currently regulated by the Negative Investment List. The Negative Investment List regulates, among others, maximum percentages of foreign investment in a certain business fields that is open for investment.

Since the Job Creation Act has not revoked the Negative Investment List, the presidential regulation concerned is still applicable until the issuance of an implementing regulation of the Job Creation Act that revokes the Negative Investment List. Hence, there is a possibility that the presidential regulation referred to in the Job Creation Act will amend or repeal the Negative Investment List.

Incentives for Tourism Business Sector

The tourism business sector has been added to the investment sectors that are eligible to obtain tax facilities.

2) What does it mean for Business?

The issuance of the Job Creation Act indicates the possibility of new sectors and activities being open to both domestic and foreign investment or perhaps domestic or foreign investment by way of establishment of a cooperation with the government in certain sectors. This shows a positive outlook for the business climate in Indonesia.

However, the list above is still subject to certain conditions as further determined in implementing regulations. The Job Creation Act provides that those implementing regulations (including the amendment or repeal of the Negative Investment List to align with changes made by the Job Creation Act) must be promulgated no later than 3 (three) months as from the enactment of the Job Creation Act. As the Job Creation Act was formally enacted on 2 November 2020, we anticipate that the implementing regulations thereof must be issued by February 2021. However, this does not eliminate the possibility of delay in the issuance of such implementing regulations beyond the maximum time provided in the Job Creation Act.

The above explanations are an overview of regulations in the Job Creation Act regarding investment. If you need an in-depth study or analysis of the benefits, legal implications and legal consequences of the Job Creation Act for your investment plans or development tailored to your preferred industry, you can contact us via Nashatra Prita, S.H., (nashatra.prita@dentons.com).

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