



News Update – Indonesian New Negative List Investment 2016

OVERVIEW

The President of the Republic of Indonesia has signed a Presidential Regulation No. 44 of 2016 on the List of Business Fields Closed to Investment and Business Fields Conditionally Open for Investment, otherwise known as the Negative Investment List ("**New Negative List**") on 12 May 2016. The New Negative List was made available to the public last week and the effective date of the New Negative List is **18 May 2016**.

The New Negative List comes as part of the latest round of economic stimulus known as Economic Policy Package Vol. XII introduced by President Joko Widodo's Government. Generally, the New Negative List is to open more sectors and ultimately it aims to attract more investment into Indonesia.

With the Government hopes to increase the country's competitiveness, in terms of both the ASEAN Economic Community and the global economy, by offering better protection for strategic economic sectors and small-and medium-scale enterprises and cooperatives ("**SME**"). In order to achieve this objective, the New Negative List revises various components of the previous Presidential Regulation No. 39 of 2014 ("**2014 Negative List**").

CLASSIFICATION OF BUSINESS FIELDS OPEN TO INVESTMENT

The New Negative List sets out three main Indonesian investment fields, namely:

- a. Business fields which are closed to investment, specifically business fields which are restricted for all investment activity (both foreign and domestic), as specified under Appendix I of the New Negative List;
- b. Business fields which are conditionally open to investment, including:
 - Business fields reserved for SMEs, as specified under Appendix II of the New Negative List; and
 - Business fields defined by certain requirements which have to be met, as specified under Appendix III of the New Negative List. These include requirements relating to ownership (i.e. foreign, domestic and ownership which relates to the ASEAN Economic Community - **AEC**), location and special licenses; and
- c. Business fields which are entirely open to investment, which are basically any businesses which do not fall into either category (a) or category (b) above.

SECTORS CLOSED TO INVESTMENT

The New Negative List has added a new business field which is closed to both foreign and domestic investment, namely the collection of valuable objects from sunken ships. Other business fields which are closed to investment under the New Negative List remain substantially similar to those set out in the 2014 Negative List.

SECTORS RESERVED FOR SMEs

The New Negative List specifies a total of 145 business fields which are either reserved for SMEs or which are reserved for SME's partnership schemes. These business fields were basically regulated in the 2014 Negative List with similar specifications being set out. The core difference is the new separation of appendices.

Public Works

The New Negative List however has expanded the opportunities for SMEs in the public works sector. Previously, this restriction encompassed construction services with a value of IDR 1 billion at the most. The New Negative List has increased the reservation value for the SMEs to IDR 50 billion for construction services with low level of risk and consultation construction services to IDR10 billion.

Trade

The New Negative List now requires entities wishing to establish retail businesses involving postal delivery and internet ordering (online retail) to engage in partnerships with SMEs. Previously, this field was opened to domestic parties but it did not include the obligation to engage in any partnership schemes with SMEs.

CHANGES TO INVESTMENT CONDITIONS: INVESTMENT CAPITAL, REQUIREMENTS, AND LOCATIONS

In general, Appendix III to the New Negative List incorporates substantially similar business sectors to those set out in Appendix II to the 2014 Negative List. However, several changes have been made to the investment conditions which have to be met by certain business fields, such as:

Agriculture

In general, the New Negative List does not change the foreign-investment capital for the agricultural sector in comparison with the 2014 Negative List. However, a number of changes have been made to the foreign-investment requirements which have to be met by several agricultural business fields, for example:

- a. The mandatory recommendation from the Minister of Agriculture for agricultural business fields which are opened to foreign investment has been amended, specifically: 1) Seeding and cultivation businesses for staple crops located in farming areas of 25 hectares or larger and 2) Industrial plantation seeding businesses located in farming areas of 25 hectares or larger; etc.
- b. The following conditions have now been imposed upon agricultural business fields which are opened up to 95% foreign investment: 1) Allocation of 20% of an investor's plantation area to plasma plantations or 2) Use of raw materials amounting to at least 20% of the investor's total area of plantation crops.

Industry

Under the New Negative List, the crumb-rubber sector is no longer reserved for domestic investors only. However, businesses are still required to secure licenses from the Ministry of Industry and also satisfy the following requirements relating to raw materials:

- a. At least 20% of any raw materials utilized should derive from the business's own farm; and
- b. At least 80% of any raw materials utilized should be done so through partnership schemes made between a SME and the business in question, with at least 20% of any plantation area being set aside for plasma plantation farming.

Public Works

The New Negative List sets out two new sub-business fields relating to public-works sectors, specifically:

- a. Construction services which utilize advanced technologies and/or are considered high risk and/or have a value amounting to IDR 50 billion or more: foreign investment is allowed up to 67% for non-ASEAN countries or 70% for ASEAN countries; and
- b. Construction consultation services which utilize advanced technologies and/or are considered high risk and/or have a value amounting to IDR 50 billion or more: foreign investment is allowed up to 67% for non-ASEAN countries or 70% for ASEAN countries.

Trade

A number of changes have been made under the New Negative List which relates to trade-sector investment requirements, such as:

- a. The list has excluded direct selling and futures brokerages, which means that these business fields are now entirely opened to investment;

- b. The list adds a new business field, namely: department-store businesses of an area of between 400m² to 2,000m². This business field is now opened to foreign investment of up to 67% and requires the issuance of a license by the Minister of Trade, provided that the department store in question is located in a mall and that the addition of new outlet stores is to be based on pay performance; and
- c. Increases the foreign-investment capital for warehouse businesses or trade engaged in by distributors which are not related to any production processes, from 33% to 67%.

Tourism and Creative Economy

A number of changes have also been made to the New Negative List which relates to the tourism sector, specifically:

No.	Sub-Business Field	Foreign-Investment Capital	
		2016 New Negative List	2014 Negative List
1	Zero to two-star hotels and the management of historical sites (e.g. temples, palaces).	67%	51%
2	Motels, bowling alleys, billiard halls, golf courses, etc.	67% or 70%, for foreign investors from ASEAN country	49% or 51% for foreign investors that partner-up with SMEs
3	Museums and catering services	67% or 70%, for foreign investors from ASEAN country	51%

The New Negative List no longer incorporates **film-production services** as one of its sub-business fields (which includes: production houses, film-production and distribution facilities, recording studios). Thus, this particular business field is now opened to unrestricted investment.

Communications and Information Technology

The New Negative List increases the foreign-investment restrictions from 49% to 67% for the following businesses:

- a. Permanent telecommunications network providers;
- b. Mobile telecommunications network providers;
- c. Integrated telecommunications network providers;
- d. Telecommunications content services;
- e. Call centers;
- f. Internet service providers;
- g. Data communications services;
- h. Internet calls in the public interest; and
- i. Other multimedia services.

Finance

The New Negative List adds three new financial-sector business fields, specifically for investment financing companies, working-capital financing companies and multipurpose financing companies. These business fields are opened to foreign investment of up to 85%. Moreover, the New Negative List has removed pension funds from the list, hence this business field is now entirely open to investment.

Should you need any further information, please do not hesitate to contact us at:

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