

## LEGAL UPDATE – NEGATIVE LIST ON INVESTMENT

On 12 May 2016 the President of the Republic of Indonesia issued a new Presidential Regulation No. 44 of 2016 regarding the List of Business Fields which are Closed and Business Fields which are Conditionally Open for Capital Investments (“**DNI 2016**”) or commonly known as the Negative List of Investment which generally serves as an implementing regulation to the Law No. 25 of 2007 concerning Investments. With the issuance of DNI 2016, the Indonesian government replaced the previous regulation of the same title under Presidential Regulation No. 39 of 2014 (“**DNI 2014**”). DNI 2016 was issued mainly because the Indonesian government believes that it is necessary to further enhance domestic and foreign investment activities in the face of the Association of South East Asian Nations (“**ASEAN**”) Economic Community and the dynamics of the economic globalization.

Further, in line with the current government’s program to encourage private sector investment in infrastructure, DNI 2016 provides for greater flexibilities in several business fields related to infrastructure projects. A good example, DNI 2016 has lowered the minimum project value threshold to the effect that companies established in the framework of Foreign Capital Investment (*Penanaman Modal Asing* – “**PMA**”) with 67% foreign shareholdings (or even 70% if shareholdings originate from ASEAN countries) may render construction services, as project executors, in construction projects which require advanced technology and/or involve high risks and/or are each valued at Rp50,000,000,000 (fifty billion Rupiahs), from the previous project value of Rp1,000,000,000,000 (one trillion Rupiahs). Another example in this sector is by the omission of the maximum 95% foreign shareholding in toll road operation business to the effect that PMA with 100% foreign shareholding may now become toll road operators.

Similar to other sectors, DNI 2016 has also brought several changes to the trade sector, especially in retail business which might be well appreciated by the business communities. The new list now allows PMA companies with 67% foreign shareholding to open department stores in malls with 400m<sup>2</sup> – 2,000m<sup>2</sup> selling floor area coverage. Another significant change is that PMA distributors may now have 100% foreign shareholding as long as they are affiliated with the manufacturer of the products they distribute, otherwise, they may only have 67% foreign shareholding, which is still less strict from the previous 33% foreign shareholding limitation. Furthermore, in response to the increasing demands for clearer distinction from



electronic trading practitioners, DNI 2016 has also introduced a new business activity in the list called “*organizer of trading transactions through electronic system*”. It is provided in DNI 2016 that the said organizer may have a maximum 49% foreign shareholding provided that it has less than Rp100,000,000,000 (one hundred billion Rupiahs)’s investment value.

Next, business practitioners in the Tourism and Creative Economy sector will also enjoy significant easing in terms of foreign shareholdings. DNI 2016 has abolished limitations previously applied in several lines of businesses in DNI 2014, among others, restaurants, bars and cafes. Motion pictures-related businesses may also be expected to receive plenty of interests from foreign investors as most activities in the said field are unconditionally open for foreign investments.

In addition to the easing in foreign ownership as previewed above, DNI 2016 has also removed ambiguities associated with various definitions that were not stated in DNI 2014. Various terms such as business fields, business fields open for investments, partnership and cooperatives have now been clearly defined in Article 1 of the DNI 2016 to ensure clarity of meaning for each respective definition which were evidently missing from the DNI 2014. Furthermore, DNI 2016 also restates several important provisions that have already been provided for in DNI 2014, among others, grandfathering clause (to ensure non-retroactive nature of the regulation) and the guarantee that any business fields not prescribed in DNI 2016 will be deemed unconditionally open for foreign investments.

**Pursuant to DNI 2016, these are some significant changes which are made to business fields that are closed for investment:**

No.	DNI 2014			DNI 2016		
	Business Fields	Sector	Framework	Business Fields	Sector	Framework
1.	Utilization (extraction) of coral from nature for: construction materials/lime/ calcium and souvenirs/ jewellery as well as living coral or dead coral (recently dead coral) from nature	Forestry	Closed	Utilization (extraction) of coral from nature for: construction materials/lime/ calcium, <b>aquarium</b> and souvenirs/ jewellery as well as living coral or dead coral	<b>Maritime and Fisheries</b>	Closed



No.	DNI 2014			DNI 2016		
	Business Fields	Sector	Framework	Business Fields	Sector	Framework
				(recently dead coral) from nature		
2.	Salvage of valuable cargo from shipwreck	Maritime and Fisheries	Special Permit	Salvage of valuable cargo from shipwreck		<b>Closed</b>

The following are list of several business fields that are conditionally open for investment, that are marked different in comparison to DNI 2014:

AGRICULTURE SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
1.	Plantation seedling industry with an area of more than 25Ha	Maximum foreign capital investment 95%	Maximum foreign capital investment 95% <b>Obligation of 20% plasma</b>
2.	Plantation product manufacturing with specified capacity or exceeds the specified capacity	Maximum foreign capital investment 95%	Maximum foreign capital investment 95% <b>Minimum of 20% of raw materials must originate from own plantation</b>

FORESTRY SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
1.	Operation of nature tourism in the form of provision of ecotourism facilities, activities and services in forest areas, including aqua tourism, nature adventure tourism and natural cave tourism	Maximum foreign capital investment 51%	Maximum foreign capital investment 51% <b>Maximum 70% for capital investment from ASEAN countries</b>

MARITIME AND FISHERIES SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
1.	Cultivation of coral/ornamental coral	Regulated in forestry sector with maximum foreign capital investment 49%	<b>Recommendation from the Ministry of Environment and Forestry</b>

ENERGY AND MINERAL RESOURCES SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
1.	Geothermal power plant with capacity of $\leq$ 10 MW	--	<b>Maximum foreign capital investment 67%</b>
2.	Construction and installation of electrical system of low/medium voltage electrical system	Maximum foreign capital investment 95%	<b>Domestic capital investment 100%</b>
3.	Electrical system's examination and testing for high/extra high	Domestic capital investment 100%	<b>Maximum foreign capital investment 49%</b>



ENERGY AND MINERAL RESOURCES SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
	electrical utilities or electrical systems		

INDUSTRY SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
1.	Crumb rubber industry	Domestic investment 100% capital	<b>Special permit from the Ministry of Industry provided that the industry is integrated with rubber plantation development:</b> <b>a. fulfillment of at least 10% of the need for raw materials at least 20% from own rubber plantation;</b> <b>b. fulfillment of maximum 80% of the need for raw materials with partnership scheme with at least 20% of the plantation area being a plasma plantation</b>

PUBLIC WORKS SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
1.	Construction services with advanced technology and/or high risks and/or work value of more than Rp50,000,000,000	--	<b>Maximum foreign capital Investment 67%</b> <b>Maximum 70% for capital investment from ASEAN countries</b>
2.	Consultancy services/business services for construction with advanced technology and/or high risks and/or work value of more than Rp50,000,000,000	--	<b>Maximum foreign capital Investment 67%</b> <b>Maximum 70% for capital investment from ASEAN countries</b>

TRADE SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
1.	Department store with sales floor area of 400m <sup>2</sup> – 2000m <sup>2</sup>	Domestic investment 100% capital	<b>Maximum foreign capital Investment 67% with special permit from Ministry of Trade with requirements:</b> <b>a. located in a mall and not stand alone;</b> <b>b. additional outlet store based on export performance</b>



<b>TRADE SECTOR</b>			
<b>No.</b>	<b>Business Fields</b>	<b>DNI 2014</b>	<b>DNI 2016</b>
2.	Distributor that is not affiliated with production	Maximum foreign capital investment 33%	<b>Maximum foreign capital investment 67%</b>
3.	Warehousing	Maximum foreign capital investment 33%	<b>Maximum foreign capital investment 67%</b>

<b>TOURISM AND CREATIVE ECONOMY SECTOR</b>			
<b>No.</b>	<b>Business Fields</b>	<b>DNI 2014</b>	<b>DNI 2016</b>
1.	Museum management	Maximum foreign capital investment 51%	<b>Maximum foreign capital investment 67%</b>
2.	Two stars hotel	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 67%</b>
3.	Karaoke	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 67%</b> <b>Maximum 70% for capital investment from ASEAN countries</b>
4.	Impresario services	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 49%</b> <b>Maximum 70% for capital investment from ASEAN countries</b>
5.	Motion picture technical services (filming studio, film processing, lab, means of film dubbing, means of printing/duplicating film)	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 100%</b>
6.	Motion picture technical services (filming, film editing, film subtitling, filmmaking, movie theatres ,recording studio, film distribution)	Domestic Capital investment 100%	<b>Maximum foreign capital investment 100%</b>

<b>COMMUNICATION AND INFORMATICS SECTOR</b>			
<b>No.</b>	<b>Business Fields</b>	<b>DNI 2014</b>	<b>DNI 2016</b>
1.	Telecommunication content provision service operator (ringtone, premium short message service, etc.)	Domestic capital investment 49%	<b>Maximum foreign capital investment 67%</b>
2.	Internet service provider	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 67%</b>
3.	Organizer of trade transaction through electronic system (platform based marketplace, daily deals, price grabber, online classified advertisements) with investment value of less than Rp100.000.000.000	--	<b>Maximum foreign capital investment 49%</b>



<b>TRANSPORTATION SECTOR</b>			
<b>No.</b>	<b>Business Fields</b>	<b>DNI 2014</b>	<b>DNI 2016</b>
1.	Supporting business in terminals	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 67%</b>
2.	Airport related services	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 67%</b>
3.	Loading and unloading of cargo (maritime cargo handling and aircraft leasing)	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 67%</b> <b>Maximum 70% for capital investment from ASEAN countries</b>
4.	Provision and operation of ports in rivers and lakes	Special permit	<b>Maximum foreign capital investment 49%</b>

<b>FINANCIAL SECTOR</b>			
<b>No.</b>	<b>Business Fields</b>	<b>DNI 2014</b>	<b>DNI 2016</b>
1.	Guarantee company	--	<b>Maximum foreign capital investment 30%</b>

<b>MANPOWER SECTOR</b>			
<b>No.</b>	<b>Business Fields</b>	<b>DNI 2014</b>	<b>DNI 2016</b>
1.	Work training (to provide, obtain, enhance and develop work competence, productivity, discipline, attitude and work ethics among others in the area of technical and engineering skills, business administration, language, tourism, management, information technology, art and agriculture directed to prepare the work force in entering the working environment)	Maximum foreign capital investment 49%	<b>Maximum foreign capital investment 67%</b>

<b>HEALTH SECTOR</b>			
<b>No.</b>	<b>Business Fields</b>	<b>DNI 2014</b>	<b>DNI 2016</b>
1.	Pest control/fumigation service	Domestic capital investment 100%	<b>Maximum foreign capital investment 67%</b>
2.	Health equipment industry: class A (cotton, bandage, gauze, stick, IV pole, sanitary napkin, adult diaper, patient bed, wheelchair)	--	<b>Maximum foreign capital investment 33%</b>
3.	Health equipment industry: class B (surgical mask, syringe, patient monitor, condom, surgical gloves, haemodialysis fluid, PACS, surgical knives)	--	<b>Special permit from the Ministry of Health</b>
4.	Health equipment industry: class C (IV catheter, X-Ray, ECG, patient monitor, orthopaedic	--	<b>Special permit from the Ministry of Health</b>



HEALTH SECTOR			
No.	Business Fields	DNI 2014	DNI 2016
	implant, contact lens, oximeter, densitometer		
5.	Health equipment industry: class D (CT scan, MRI, cardiac catheter, cardiac stents, HIV test, pacemaker, dermal filler, ablation catheter)	--	<b>Special permit from the Ministry of Health</b>

Lastly, in addition to the revocation of DNI 2014, DNI 2016 provides that all implementing regulations issued to implement DNI 2014 shall remain valid until amendments to the same are enacted.

Notwithstanding the foregoing discussions, it is advisable that companies, investors and/or potential investors consult and seek assistance from related professionals before taking any proposition pursuant to this Presidential Regulation. Should you require further information, please do not hesitate to contact us at below details:

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