



Omnibus Law Newsletter

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Summary of the Presidential Regulation
Number 10 of 2021 regarding Business
Fields for Investment

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Summary of the Presidential Regulation Number 10 of 2021 regarding Business Fields for Investment

On February 2, 2021, the Presidential Regulation Number 10 of 2021 regarding Business Fields for Investment was promulgated (“PP 10/2021”). This regulation, among the 49 regulations promulgated on the same day in relation to the Omnibus Law, is issued to implement the provisions on Article 77 and Article 185 point (b) of the Law Number 11 of 2020 regarding Job Creation (“UU 11/2020”). It aims to make Indonesia more attractive for investment, especially foreign investment.

We summarize in this newsletter some of the key points of PP 10/2021, which will become effective on March 4, 2021, 30 days after its promulgation, date at which the Presidential Regulation Number 44 of 2016 (the “Negative Investment List”) will no longer be effective.

1. Business Fields Open to Investment

In accordance with Article 2 of PP 10/2021, all business fields are now open for all investors, except:

- a) Certain business fields stated as closed to Investment in UU 11/2020 (which superseded Law Number 25 of 2007 on Investment);
- b) Certain business fields that can only be carried by the Central Government, such as activities of a service-based nature or related to strategic defense.

Paragraph 2. hereafter further discusses the list of business fields stated as closed to investment in UU 11/2021.

Article 3 of PP 10/2021 classifies business fields open to investment into 4 categories:

- a) Priority business fields;
- b) Business fields reserved to/or requiring partnership with Micro, Small and Medium Enterprises (MSME);
- c) Business fields under specific conditions; and
- d) Other business fields not specified in the first 3 categories, which are open to domestic and foreign investors, without any conditions or restrictions in terms of ownership.

1.1. Priority Business Fields

PP 10/2021 lists down 245 business fields as priority business fields. The list of priority business fields in Attachment I of PP 10/2021 is based on Indonesian Standard Industrial Classification (KBLI) codes.

Priority business fields are those fulfilling the following criteria:

- a) National strategic project/program;
- b) Capital intensive;
- c) Work intensive;
- d) High technology;
- e) Industrial pioneer
- f) Export oriented; and/or
- g) Research, development, and innovation oriented.

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Priority business fields are entitled to fiscal or non-fiscal incentive benefits, in accordance with prevailing regulations, comprising of:

Fiscal Incentives	Non-Fiscal Incentives
Tax allowance	Ease of business licensing
Tax holiday	Provision of supporting infrastructure, energy, raw material
Reduction in corporate income tax and net income reduction facilities	Immigration and labour facilities
Customs and excise incentive	Other facilities

1.2. Business Fields Reserved or Requiring Partnership with MSME

PP 10/2021 lists down in Attachment II 89 business fields reserved or requiring partnership with MSME based on KBLI.

Business fields reserved to MSME are closed to foreign investment and are defined as follows:

- a) Business fields not using technology or relying on simple technology;
- b) Business fields which are business intensive or relate to cultural heritage;
- c) Business fields requiring investment not exceeding more than IDR 10 billion (excluding land and building).

Business fields requiring partnership with MSME are usually occupied by MSME or are those part of the supply chain of large scale business (such as the manufacturing of spare parts for the automotive industry for instance).

1.3. Business Fields under Specific Conditions

PP 10/2021 lists down in Attachment III 46 business fields open to investment under specific conditions.

Business fields under specific conditions as defined by Article 6 of PP/2021 are:

- a) Business fields reserved to domestic investment;
- b) Business fields open to foreign investment with restrictions on ownership;
- c) Business fields requiring special licenses.

Business fields reserved to domestic investment include, among others, the traditional medicine industry, the traditional cosmetic industry, the batik industry, or the traditional ship industry.

Business fields open to foreign investment with restrictions on ownership include among other the air transport industry, the sea transport industry, or postal services.

The restrictions on foreign investment stated in Article 6 are subject to the following exceptions:

- For foreign investment with special rights based on an agreement between Indonesia and the country of origin of the investor;
- For foreign investment made prior to the enactment of PP 10/2021;
- For foreign investment made in special economic zones; and
- For foreign investment made through the Indonesian stock market (portfolio investment).

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2. Business Fields Closed to Investment

UU 11/2020 officially restricts 6 business fields for investment, as follows:

- a) Cultivation and Narcotics (agricultural sector);
- b) All forms of gambling and casino (tourism and economy creative sector);
- c) Fishing species of fish listed in the Appendix I of a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (forestry sector);
- d) Utilization and extraction of coral and utilization and extraction of coral reef from its nature for building material/chalk/calcium, aquarium, and souvenir/jewelry, as well as living coral or dead coral (recent death coral) from its nature (marine and fisheries sector);
- e) Industry of Chemical weapons (industrial sector);
- f) Industry of industrial chemical ingredient and non-friendly chemical material which could destroy ozone layer (industrial sector).

Liquor and wine industry, previously closed to investment for both domestic and foreign investors, is not part of the business fields listed as closed to investment in UU 11/2020 and would be then open to investment, as business fields under specific conditions (as specified in Attachment III of PP 19/2021).

3. Rules for Foreign Investment

PP 10/2021 specifies the following rules applicable to foreign investment:

- a) Foreign investment can be involved only in large scale activity requiring an investment value of more than IDR 10 billion, excluding the value of land and building; and
- b) Foreign investment should be conducted in Indonesia through limited liability company (Perseroan Terbatas/PT), except if stipulated otherwise by law.
- c) Foreign investment in financial services and banking industry must comply with specific regulations applicable (regarding licensing and ownership).

The above rule regarding investment value does not apply for foreign investment made in tech based startups located in special economic zones.

This Newsletter is a summary of Presidential Regulation Number 10 of 2021. It is therefore not comprehensive and does not constitute professional advice. Prevailing laws and regulations are subject to changes.

For any inquiries regarding this newsletter, do not hesitate to contact us.

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