

CLIENT UPDATE:

27 MAY 2016

NEW NEGATIVE LIST HAS FINALLY BEEN ISSUED

BACKGROUND

The Government of the Republic of Indonesia has finally issued the Presidential Regulation No. 44 of 2016 regarding the List of Business Fields Which Are Either Entirely Closed or Conditionally Open to Foreign Investment ("New Negative List") which revokes the Presidential Regulation No. 39 of 2014 regarding the List of Business Fields Which Are Either Entirely Closed or Conditionally Open to Foreign Investment ("2014 Negative List").

Generally, the background for the issuance of the New Negative List is to increase foreign investments in Indonesia by removing or increasing foreign shareholding in certain business fields which were previously closed or limited for foreign investments.

The New Negative List was signed on 12 May 2016 and effective as of 18 May 2016.

Applicability to a public listed company is still an issue

Unfortunately, the New Negative List does not provide clear answer to the issues on whether it applies to publicly listed companies (Tbk.) and the exemptions of "indirect investment" or "portfolio investment", which generally interpreted as non-controlling investments remain the same.

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As such, this issue would still need to be discussed on a case-by-case basis with the relevant regulators.

Key changes to the maximum foreign shareholding percentage

The maximum foreign shareholding percentage on certain business fields are now as follows:

No.	Business Field	2014 Negative List	New Negative List	Remarks
1.	Hospital	67%	67% or 70% if the foreign shareholder is from ASEAN countries	Can be located throughout Indonesia except in Manado and Makassar
2.	Main Clinic: Clinic Specialised Medical Services, Dental Specialist, Nursing Services, and other Hospital Services.	70%	67% or 70% if the foreign shareholder is from ASEAN countries	
3.	Distributor	33%	67%	
4.	Department Store with trading area between 400 – 2,000 sqm	Closed	67%	Must be located in a mall and not stand alone.
5.	Warehousing	33%	67%	
6.	Non-star, 1 star and 2 stars hotel	51%	67%	
7.	Restaurants	51%	Not listed	Restaurant is no longer listed in the New Negative List

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No.	Business Field	2014 Negative List	New Negative List	Remarks
				and therefore opened for 100%
8.	Golf Course	49%	67% or 70% if the foreign shareholder is from ASEAN countries	
9.	Impresariat Services (live performance or concerts organizer)	49% or 51% if in partnership with small, micro, medium enterprises	67% or 70% if the investors are from ASEAN countries	
10.	Freight Forwarding	49%	67%	
11.	Online Trading Provider (marketplace, daily deals, price grabber), with investment amount less than IDR 100 billion	Not regulated	49%	
12.	Large Scale Pharmacist	Closed	Not listed	Large Scale Pharmacist is no longer listed in the New Negative List and therefore opened for 100%

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Going Forward

Although the New Negative List states that business fields which are not listed are opened for 100% foreign investments, it is recommended to have a confirmation from the Capital Investment Coordination Board (BKPM).

Contact

This client update is intended to give an overview only on several provisions and may not cover all provisions of the New Negative List. Please do not hesitate to contact us if you need a more detailed advice, or have specific questions.

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