



# THE JAKARTA JAPAN CLUB

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## **Opinion paper on Presidential Regulation No. 39 Year 2014 on the Negative Investment List (DNI)**

The Jakarta Japan Club (JJC)

First of all, we would like to express our appreciation for the opportunity to state our opinion regarding the revision of DNI from the standpoint of foreign investment.

Japan has been the first or second largest investor into Indonesia in terms of volume for the last five years and this investment will also increase in the future.

The number of Japanese companies and offices has been expanding year by year; currently it reached to more than 1,700 entities in Indonesia.

In addition, according to our recent survey for export-oriented JJC member companies, the export performance from the targeted 48 Japanese manufacturing companies accounted for 7.8% of total Indonesian manufacturing export in 2014.

As Japanese companies will contribute to the Indonesian economy through both FDI and exports in the future, we highly appreciate the efforts of the Indonesian government to improve the investment climate for FDI.

Moreover, considering these businesses' contribution to Indonesian export and employment over many years, we would like to request the opportunity to hold a constructive dialogue between these companies and the Indonesian government.

In line with this, we would like to state our opinion on the upcoming DNI revision as follows.

### **1. Avoidance of introducing new restrictive measures**

- 1) The most recent DNI turned out to limit foreign ownership of distributors and warehouses to 33% from the previous 99%. We think that predictability is the most important factor when making investment decisions, thus, this sudden restriction has negatively affected new FDI. We hope the new DNI commits to liberalize foreign ownership, or at least maintaining the status quo at the existing level, not to introduce any new restrictive measures or prohibit foreign ownership.

- 2) Similarly, the recent DNI has prohibited FDI in the retail sector, especially cosmetics, footwear, electronic appliances, e-commerce, food and beverages. We hope that those business fields which have not yet been regulated under the current DNI will still be open for FDI without any new restrictions.
- 3) We hope that the grandfathered status which has been granted for existing FDI will continue to be applicable even after changes in capital composition caused by expansion of business or M&As. Maintaining this grandfathered status will facilitate M&As, and thus dynamism in the Indonesian economy.

## 2. Consistency with regulations issued by relevant ministries

- 1) Business fields which are not included in the negative list are supposed to be open to foreign investment. However, some regulations issued by relevant ministries impose certain restrictions on such business fields. If those regulations issued by relevant ministries are consistent with the negative list, there will be more investors with a desire to invest in those open fields.
- 2) Minister of Transportation Regulation PM No. 74/2015 and PM No. 78/2015 on new freight forwarding services regulates capital requirements only for PMA (foreign capital) as lifted paid-in capital up to 2.5 million USD. The current negative list regulates the upper limit of foreign ownership of freight forwarding service companies at 49%. In order to fulfill both the requirements of the negative list and the Transport Minister Regulation, it is necessary to increase the stakes of local partners, but this requirement is quite difficult to meet. In this regard, we request the harmonization of the negative list and other relevant regulations.
- 3) Similarly, Minister of Public Works Regulation No. 8/2011 and Institutional Regulation of National Construction Service Development Board Nos. 5/2014 and 10/2014 regarding the second amendment on Regulation No. 10/2013 concerning construction licensing stipulate minimum capital requirements of foreign construction companies for the application/ renewal of their construction license. We request to add a foreign ownership cap exemption on the upcoming negative list as long as the foreign construction company increases their capital in order to fulfill the capital requirement for renewal of

their license.

- 4) Early this year, the Indonesian Government announced the 35GW program to stabilize electricity supply and to meet the rapid increase in demand for electricity, which will encourage foreign investment. However, there has also been a decree (No. 54/M-IND/PER/3/2012) by the Ministry of Industry directing any investor to use local goods and services on an exceptionally high level which has created a barrier to executing this program.

We therefore recommend that such requirements should be re-considered to meet the urgent requirement for electricity supply and facilitate foreign investment.

- 5) Ministry of Public Works regulation No.10/PRT/M/2014 declares that:

- Foreign construction offices must partner a with 100%-local construction company
  - 50% of the work should be done in Indonesia
- and
- 30% of the work should be executed by the local company.

It is much stricter than the negative list and becomes an obstacle for foreign companies to start up construction operations in Indonesia.

Hence, we recommend that such regulations be re-considered by the relevant ministry to ensure smooth implementation of construction works in Indonesia.

### 3. Clearer description of business category

We request greater clarity in the definition of business categories. For example, there is no KBLI number for a “distributor” in the commercial business area and the definition of “distributor” is not clear. If descriptions of business categories in the negative list are clearer, investors can know in advance whether any restriction is applicable to the type of business they are considering and they can make better informed investment decisions.

### 4. Principal business and collateral business

It should be expressly stipulated that an investor who obtained a business license for its principal business can engage in collateral business which is included in, or collateral to, the principal business. For example, we understand that a PMA which has a business license as a hotel operator can open a restaurant for customers

staying at its hotel and provide laundry services to such customers without a restaurant or laundry business license. Another example is that a distributor can engage in packaging and after-sales maintenance/repair services. If the above principle is expressly stipulated, investors feel more comfortable in making investment decisions.

5. Publication of applicable restrictions

If there is any restriction imposed by the Indonesian Investment Coordinating Board (BKPM) on certain business categories which are not expressly described in the negative list, such restriction should be expressly added to the negative list or published under guidelines. Any unofficial restriction on investment deters investors from making the decision to invest. If all restrictions are expressly and comprehensively described in the negative list, investors feel safer and more confident in deciding to invest.

6. Multiple business categories by a single PMA

We understand that a PMA can engage in multiple business categories, so long as it complies with restrictions under the negative list. However, applications of principle licenses for multiple business categories to be conducted by a PMA are sometimes rejected by BKPM. It should be expressly stipulated that a PMA can engage in multiple business categories, and if there is any requirement for such multiple business categories by a PMA, that requirement should be expressly described. We hope that after such clarification, investors will be able to make decisions to invest across a broader spectrum of business.

7. Clearer definition of portfolio investment

Restrictions under the negative list are not applicable to portfolio investment under Article 5 of the Presidential Regulations 39/2014 on the Negative List. Exemption of such portfolio investment should be maintained under the new Presidential Regulations on the Negative List and the definition of portfolio investment should be clarified. Under a clearer definition of portfolio investment, investors will feel more confident in investing in such portfolios in Indonesia and an increase of portfolio investment can be expected.

8. Change in legal status of subsidiaries

This may be an issue of BKPM Regulations, but we would like to confirm that

subsidiaries do not need to change their legal status from PMDN to PMA when their parent company has changed its legal status from PMDN to PMA. Clarification on this point regarding application of the new negative list would eliminate the concern of investors.

9. Lead time before implementation of new negative list

The new negative list should be implemented with a sufficient lead time. When the negative list was revised in 2014, companies considering investment in the newly-restricted business categories were forced to give up their investment plans in spite of devoting significant time and effort into making preparations. If the new negative list is implemented with sufficient lead time, investors can adjust their investment plan, if necessary, and proceed with their investment plan.

10. Relaxation of FDI limitation on distributors and warehouses

We could contribute to President Jokowi's policy in the following three aspects if the regulation on distributors and warehouses were relaxed.

- 1) First of all, cold-chain distributors are critical in adding value to local agriculture and fishery products.

Even Jakarta is lacking in cold-chain distribution, and the fresh fish and farm goods from local areas cannot reach the city.

Foreign logistics companies can contribute more in this area and also can create more business opportunities for local businesses as well as agriculture and fisheries outside Java.

- 2) Secondly, in order to increase FDI in manufacturing, accommodating more sales subsidiaries of manufacturing companies is key.

This is because foreign manufacturing companies conduct market research through sales subsidiaries regarding whether to invest more in setting up factories.

Therefore, if the current 33% cap on investment in distributors becomes is relaxed, it would contribute to increasing investment in manufacturing in the future.

- 3) In connection with this, thirdly, the more FDI is injected into manufacturing, the more local production will be strengthened.

11. Relaxation of limit on foreign-owned capital in retail sector

The retail sector is basically open only for domestic-owned capital. We hope for the

sector to become open to foreign-owned capital, especially in regard to mini-markets, e-commerce and department stores smaller than 2,000 m<sup>2</sup> because it is difficult to find the space and operate in an efficient manner.

## 12. Deregulations and/or relaxation for cigarette manufacturing

- 1) In the current DNI, cigarette manufacturing is regulated and subject to decisions made by the Ministry of Industry:
  - (i) Expansion may be made only by a cigarette company holding an Industrial Business License (IUI) of the same business field.
  - (ii) New investment may be made by a small- and medium-scale cigarette company only if it is in partnership with a large-scale cigarette company holding an Industrial Business License of the same business field.
- 2) Cigarette manufacturing is still a vital industry in Indonesia because of its contribution to state revenue and employment. It is very important for the government of Indonesia to make this industry open for further investment. As more investment in cigarette manufacturing means more potential revenue as well as more employment for the country, we propose relaxation of regulations for its industry in DNI.

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