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New Negative Investment List issued

By Eugene V Flynn

Following the recent enactment of a new investment law (Law No. 25 of 2007; See *Asian-Counsel*, May 2007, p. 50), the government has released a revised Negative Investment List (Daftar Negatif Investasi or DNI) identifying investment restrictions in designated business sectors. The new DNI is set out in Presidential Decree No. 7 of 2007 and supersedes both the DNI of 2000 and a related 2001 decree that required investors to partner with small and medium enterprises in certain business sectors.

The first DNI was issued in 1989 and replaced the so-called Investment Priority List that had permitted investment only in stipulated business fields. Under the negative list approach, all business sectors are open to investment except as restricted by the DNI, and the nearly 20-year trend has been to open the doors to investment in an ever-increasing range of activities. The new DNI, which took effect on July 3rd, is much more detailed and specific than prior lists, and is generally seen as a mixed bag, opening up some new fields, clarifying a few grey areas, and imposing new limits in other sectors.

New restrictions have been imposed on foreign investors in 11 sectors, with telecommunications and insurance leading the way. Under prior regulations, foreign investment in telecommunications was set at a maximum of 95 percent of share capital, without distinction between fixed-line and cellular phones. Under the new DNI, foreign investment in fixed-line telecommunications is capped at 49 percent, while the cellular industry is subject to a 65 percent limit. At least three telecommunications firms are known to have foreign ownership exceeding 65 percent at this time.

As to the insurance sector, the DNI now limits foreign ownership to 80 percent, although several existing insurance companies are known to have current foreign ownership exceeding 90 percent.

The new DNI is not retroactive and existing shareholders will not be required to divest their shareholdings in line with the newly established limits. The stated validity period of the DNI, however, is three years and there is no assurance that a future divestment requirement will not be imposed. Moreover, the market value of foreign shares exceeding the new caps will certainly be affected, particularly if the government chooses to require compliance with the new DNI in the event of a share transfer.

Areas in which the new DNI relaxes restrictions on foreign investment are significant, and include oil and gas exploration, pharmaceuticals and construction services. Additionally, in a policy shift that may directly improve the quality of life for many Indonesians, foreign investment in the educational and health care sectors has been liberalised although some limitations apply.

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Curiously, the new DNI prohibits both domestic and foreign investment in some business sectors such as private museums and alcoholic beverage production that would seem to be ideal for improving tourism (private museums) and exports (alcoholic beverages), both of which are sectors generally encouraged by government policy.

Although the new DNI has drawn grumbled criticism from some corners of the investment community, overall it appears to offer greater precision and specificity than prior lists. In a business environment renowned for its vagueness and ambiguity, the new DNI at least brings a welcomed measure of clarity.

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