



## ARMA Update: March 25, 2021

(English Version)

### The Lines of Businesses for Investment under the Omnibus Law Era

#### *(Presidential Regulation No. 10 of 2021 Regarding Investment Line of Business)*

#### Background

*“In general, the issuance of Presidential Regulation No. 10 of 2021 regarding Investment Line of Business (“PR 10/2021”) has significant exceptional differences compared to the previous regulation, which is the Presidential Regulation No. 44 of 2016 regarding Lists of Line of Business that are Closed to and Line of Business that are Open with Conditions to Investment (“PR 44/2016”). PR 10/2021 offers ease of investment through amendment regarding the lists of lines of businesses that are open to investment, lines of business that are closed to investment, and lines of businesses that shall be carried out only by the central government.”*

This ARMA Update will discuss the highlight of PR 10/2021 issued by the Government of Republic of Indonesia on 2 February 2021 as the implementing regulation of Article 77 and Article 185 (b) of Law No. 11 of 2020 regarding Job Creation (hereinafter referred to as the “**Omnibus Law**”) that amended and revoked some provisions of Law No. 25 of 2007 regarding Investment (“**Investment Law**”).

Our discussion is focus on understanding the scope of PR 10/2021 and new regime for opened lines of businesses, open lines of businesses with conditions, and closed to investment.

#### What are the Scopes of PR 10/2021?

PR 10/2021 emphasizes that every line of business<sup>1</sup> is open to investment activities, except lines of businesses that are declared closed to investment or activities that shall be carried out only by the Central Government. Below we provide details for such classifications:

##### ❖ Line of Businesses that are Declared Closed

Line of Businesses that are declared closed are 6 (six) lines of business stipulated in Article 77 of Omnibus Law, among others:

- a) cultivation of drugs and group I of drugs industry;
- b) gambling/casinos;
- c) catching of fish species listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);
- d) utilization (collection) of coral from nature for construction materials/lime/calcium, aquarium, and souvenirs/jewellery as well as living coral or dead coral (recently dead coral) from nature;

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<sup>1</sup> Any form of business activity that is performed to produce goods or services in economic sectors (Article 1 (1) of PR 10/2021).



- e) industrial chemical weapon production; and
- f) industrial chemical industry and Ozone Depleting Substances (BPO).

❖ **Line of Businesses that Allocated to the Central Government**

Line of Businesses that allocated to Central Government are activities that are carried out for service purposes or in the event of defenses and securities.<sup>2</sup>

❖ **Line of Business that Open for Investment**

There are 4 (four) classifications of line of business that open for investment, as follows<sup>3</sup>

- a) Priority line of business;
- b) Line of business that are allocated or in partnership with Cooperatives and Micro-Small-Medium Enterprises (“MSMEs”);
- c) Line of business with certain conditions; and
- d) Line of business that are not included in point a, b, and c that shall be carried out by any investor.

Those provisions shall not apply to investment activities that are performed in a Special Economic Zone (*Kawasan Ekonomi Khusus* or “KEK”).<sup>4</sup>

### What are the Priority Lines of Businesses?

PR 10/2021 introduces the concept of priority line of business that shall be granted fiscal incentives and non-fiscal incentives. Priority line of business are lines of businesses that fulfill certain conditions, as follows:<sup>5</sup>

- a) strategic national program/project;
- b) capital intensive;
- c) labor-intensive;
- d) high technology;
- e) pioneer industry;
- f) export-oriented; and/or
- g) orienting in research, development, and innovation activities.

PR 10/2021 categorizes 245 (two hundred and forty-five) lines of businesses as priority as listed in Annex I. Investors who investing in priority lines of businesses shall be granted incentives, as follow:<sup>6</sup>

- a) Fiscal Incentives
  - (i) Taxes incentives that consist of (i) income taxes for investment in specific line of business;
  - (ii) reduction in corporate income taxes; or (iii) reduction in corporate income taxes and reduction in net income taxes facilities; and

<sup>2</sup> Article 2 (3) of PR 10/2021.

<sup>3</sup> Article 3 (1) of PR 10/2021.

<sup>4</sup> Areas with certain boundaries within the territory of Republic of Indonesia that are designated to perform economic function and obtain certain facilities.

<sup>5</sup> Article 4 (1) of PR 10/2021.

<sup>6</sup> Article 4 (5) and (6) of PR 10/2021.



- (ii) Custom incentives in the form of import duties exemption regarding machines import and goods and materials for industry development in the event of investment.

b) Non-fiscal incentives

Ease of business licensing, providing of supporting infrastructures, guarantee of energy availability, guarantee of materials availability, immigration, employment, and other facilities that are further regulated in laws and regulations.

Further, Annex I to PR 10/2021 listed the types of business' activities that obtain Income Taxes facilities to any investment in specific lines of businesses and/or specific areas (*Tax Allowance*) and Corporate Income Taxes facilities (*Tax Holiday*).

### **What are the Lines of Businesses that are Allocated or in Partnership with Cooperatives and MSMEs?**

PR 10/2021 allocates 89 (eighty-nine) lines of business as the type of business that are allocated or in partnership with Cooperatives and MSMEs as listed in Annex II to PR 10/2021.

❖ **Line of Business that are Allocated for Cooperatives and MSMEs**

Lines of businesses that are allocated for Cooperatives and MSMEs are determined based on conditions, among others:<sup>7</sup>

- a) business activities that are not using technology or using simple technology;
- b) business activities with special processes, labor-intensive, and having specific and hereditary cultural heritages; and/or
- c) business activities with a maximum capital of Rp10.000.000.000,00 (ten billion Rupiah) excluding land and building values.

There are 51 (fifty-one) lines of businesses that are allocated for Cooperatives and MSMEs that are listed in Annex II to PR 10/2021.

❖ **Line of Business that are Open for Large Businesses<sup>8</sup> in Partnership with Cooperatives and MSMEs**

PR 10/2021 also regulates the obligations for investors with a business classification in Large Business to carry out partnership with Cooperatives and MSMEs in lines of businesses that meet the conditions as follow:<sup>9</sup>

- a) lines of businesses that are widely carried out by SMEs and cooperatives; and/or
- b) lines of businesses that are encouraged to enter large-scale business supply chain.

There are 38 (thirty-eight) lines of businesses that require Large Businesses to carry out partnership with Cooperatives and MSMEs as listed in Annex II of PR 10/2021.

<sup>7</sup> Article 5 (2) of PR 10/2021.

<sup>8</sup> Economic productive businesses that are performed by business entity with a net worth or annual sales that exceeds Medium Business, that consist of state-owned or private enterprises, joint ventures and foreign businesses that perform economic activities in Indonesia (Article 1 (4) of the SMEs Law). Based on Article 35 (3) GR 7/2021, the requirement for business capital for Large Businesses are more than Rp10.000.000.000,00 (ten billion Rupiah).

<sup>9</sup> Article 5 (3) of PR 10/2021.



## What are the Open Lines of Businesses with Certain Conditions?

PR 10/2021 categorized 41 (forty-one) lines of businesses as open line of business with certain conditions as listed in Annex III to PR 10/2021.

Lines of businesses with certain conditions are line of business that may be carried out by any investor, including Cooperatives and MSMEs that fulfill the requirements, as follow:<sup>10</sup>

### ❖ Investment Requirements for Domestic Investors

There are 16 (sixteen) lines of business that required to domestic investment as attached in Appendix III GR 10/2021, such as lines of businesses are Traditional Medicine Product for Humans (KBLI: 21022) and the Wooden Building Goods Industry (KBLI: 16221). However, there are several lines of businesses that also require other than these requirements, including the following:

- a) maximum foreign capital ownership of 49% (through capital market) in the event of addition or business development, including Publishing of Newspaper, Magazine, and Bulletin (Press) business field (KBLI: 58130);
- b) maximum foreign capital ownership of 20% in the event of addition or business development, including Private Broadcasting Agency (KBLI: 60102) or Subscribed Broadcasting Agency (KBLI: 60102); and
- c) moslem, including Travel Bureau Activities for Umrah Worship and Special Hajj (KBLI: 79122).

### ❖ Investment Requirements with Limitation to Foreign Capital Ownership

There are 24 (twenty-four) lines of businesses that are required a limitation to foreign capital ownership with maximum foreign investment of 49% as listed in Annex III PR 10/2021, such as Domestic Sea Transport for Tourism (KBLI: 50113) or Interprovincial Ferry (KBLI: 50214). However, there are some lines of businesses that required national capital to outnumber the whole foreign capital (single majority), such as Domestic Scheduled Commercial Air Transportation (KBLI: 51101) or Air Transport Activities (KBLI: 51109).

### ❖ Investment Requirements with Special Licenses

There are 3 (three) line of business<sup>11</sup> that required special licenses as listed in Annex III PR 10/2021, such as Main Equipment Industry (KBLI: 25200), where the capital ownership shall subject to the recommendation from the Ministry of Defense, and Liquor Retail Business (KBLI: 47221) and Sidewalk Vendor Liquor Business (KBLI: 47826) that required distribution network and specific places.

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<sup>10</sup> Article 6 (1) of PR 10/2021.

<sup>11</sup> This number is based on the revocation of Alcoholic Hard Liquor Industry (KBLI: 11010), Alcoholic Beverages Industry: Wine (KBLI: 11020), and Malt Beverages Industry (KBLI: 11031) on 2 March 2021.



### **How about the Lines of Businesses that are Not Included in the 3 (three) Annexes to PR 10/2021?**

Pursuant to PR 10/2021, lines of businesses that are not included in any three Annexes to PR 10/2021 may be carried out by any investor, either through foreign investment or domestic investment.<sup>12</sup>

### **How are the Provisions Regarding Foreign Investment in PR 10/2021?**

There are several provisions in PR 10/2021 regarding foreign investment, among others:<sup>13</sup>

- a) Foreign investors shall only carry out business activities in Large Business with the investment values of more than Rp10,000,000,000 (ten billion Rupiah) excluding land and building values;
- b) Foreign investors shall be limited liability company based on laws of Indonesia and domiciled in the territory of Republic of Indonesia, unless stipulated otherwise in the laws and regulations; and
- c) Foreign investors in KEK regarding technology-based startups shall have investment values equivalent to or less than Rp10,000,000,000 (ten billion Rupiah), excluding land and building values.

### **How is the Status of the Approved Foreign Investment Prior to the Issuance of PR 10/2021?**

PR 10/2021 regulates the exclusion regarding the approved investment in certain lines of businesses prior to the issuance of PR 10/2021. However, in the event where the provisions in PR 10/2021 are more beneficial to investment, the status regarding investment that prevails is the provisions in PR 10/2021.<sup>14</sup>

### **How are the Provisions Regarding Line of Business that are Included in Line of Business with Limitation to Foreign Investment and Shall Perform any Change of Foreign Capital Ownership as a Result of Merger, Acquisition, or Consolidation of the Same Lines of Businesses?**

PR 10/2021 regulates the provisions regarding limitation to foreign capital ownership in the event where line of business with limitation to foreign capital perform any changes in foreign capital ownership, among others:<sup>15</sup>

#### **❖ Merger**

In the event of a merger, the limitation to foreign capital ownership shall refer to the business license of the surviving company.

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<sup>12</sup> Article 3 (2) of PR 10/2021.

<sup>13</sup> Article 7 and 8 of PR 10/2021.

<sup>14</sup> Article 6 (4) of PR 10/2021.

<sup>15</sup> Article 6 (5) of PR 10/2021.



❖ **Acquisition**

In the event of an acquisition, the limitation to foreign capital ownership shall refer to the business license of the acquired company.

❖ **Consolidation**

In the event of consolidation, the limitation to foreign capital ownership shall refer to the provisions of the prevailed laws and regulations when the consolidated company is established.

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