



# Indonesia Negative List of Investment Number 76 of 2007

**DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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**THE PRESIDENTIAL REGULATION OF THE REPUBLIC OF INDONESIA**  
**NUMBER 76/2007**  
**REGARDING**  
**THE CRITERIA AND ESTABLISHMENT OF CLOSED BUSINESS LINE AND**  
**OPEN BUSINESS WITH CONDITIONS IN RESPECT OF CAPITAL**  
**INVESTMENT**

**THE PRESIDENT OF THE REPUBLIC OF INDONESIA,**

Considering: that in the execution of Article 12 paragraph (4) and Article 13 paragraph (1) the Law Number 25 Year 2007 on Capital Investment, it is considered necessary to draw up a Presidential Regulation on the Criteria and Establishment of Closed Business Line and Open Business with Conditions in respect of Capital Investment

In view of :

1. Article 4, paragraph (1) 1945 Constitution;
2. The Law Number 25 Year 1992 on Cooperatives (State Gazette of the Republic of Indonesia Year 1992 Number 116, Supplement to the State Gazette Number 3502);
3. The Law Number 9 Year 1995 on Small Business (State Gazette Number 74 Year 1995; Supplement to the State Gazette Number 3611);
4. The Law Number 32 Year 2004 on Regional Government (State Gazette Number 125 Year 2004; Supplement to the State Gazette Number 4437);
5. The Law Number 25 Year 2007 on Capital Investment (State Gazette of the Republic of Indonesia Year 2007 Number 67, Supplement to the State Gazette Number 4724);
6. The Government Regulation Number 44 Year 1997 on Partnership (State Gazette of the Republic of Indonesia Year 1997 Number 91, Supplement to the State Gazette Number 3718);
7. The Government Regulation Number 32 Year 1998 on the Improvement and the Development of Small Business (State Gazette of the Republic of Indonesia Year 1998 Number 46, Supplement to the State Gazette Number 3743).

## **DECIDED**

To sanction : **THE REGULATION OF THE PRESIDENT OF THE REPUBLIC OF INDONESIA ON THE CRITERIA AND ESTABLISHMENT OF CLOSED BUSINESS LINE AND OPEN BUSINESS LINE WITH CONDITIONS IN RESPECT OF CAPITAL INVESTMENT**

### **CHAPTER I GENERAL STIPULATIONS**

#### **Article 1**

In the Presidential Regulation, the following shall mean:

- (1) Capital investment is all forms of capital investment activity, both by domestic and foreign capital investors, to operate the business in the national territory of the Republic of Indonesia.
- (2) Domestic capital investment is an investment activity to operate business in the national territory of the Republic of Indonesia that is carried out by domestic investors by using domestic capital.
- (3) Foreign capital investment is an investment activity to operate business in the national territory of the Republic of Indonesia that is carried out by foreign investors, both by fully using foreign capital and by sharing it with domestic capital investor.
- (4) Investor is an individual or a business that invest in the forms of domestic and foreign capital investment.
- (5) Domestic investor is an individual of Indonesian nationality, Indonesian business, the state of the Republic of Indonesia or a region that invests capital in the national territory of the Republic of Indonesia.
- (6) Foreign investor is an individual of foreign nationality, foreign business, and/or foreign government that invests capital in the national territory of the Republic of Indonesia.
- (7) Capital is asset in the forms of money or others that is non-cash, that is owned by investors, which has an economic value.

- (8) Foreign capital is the capital owned by foreign country, an individual of foreign nationality, a foreign business, a foreign legal entity, and/or an Indonesian legal entity that is partly or completely owned by foreign party.
- (9) Domestic capital is the capital owned by the state of the Republic of Indonesia, an individual of Indonesian nationality, or a business with or without a legal form.

## **CHAPTER II**

### **SCOPE OF ACTIVITIES AND OBJECTIVES**

#### **Article 2**

- (1) All business lines or the types of business are open for capital investment activity, except for the business lines declared as closed and open with conditions.
- (2) The closed business line is a certain type of business that is prohibited to be made a business for capital investment activity by investor.
- (3) The open business line with conditions is a certain business line that can be made a business for capital investment activity with certain conditions.

#### **Article 3**

The regulation on the criteria and establishment of closed business line and open business line with conditions has the following general objectives, which are:

1. to place a secure legal foundation for the drafting process of the regulation that is relevant to capital investment;
2. to ensure transparency in the listing process of closed business lines and open business lines with conditions;
3. to provide a guidance in preparing and establishing the closed business lines and open business lines with conditions;
4. to provide a guidance in reviewing the list of closed business lines and open business lines with conditions;
5. to provide a guidance shall different interpretation occurs on the list of closed business lines and open business lines with conditions.

#### **Article 4**

- (1) The list of closed business line and open business line with conditions is a reference for investors to select business line to carry out investment activity.
- (2) The selection of business line as referred in paragraph (1) constitutes requirements to establish business legal entity for investors, especially for foreign investors before carrying out an investment activity in Indonesia.

### **CHAPTER III PRINCIPLES**

#### **Article 5**

The establishment of closed business line and open business line with conditions uses the following basic principles:

1. Simplification
2. Compliance to international agreement or commitment
3. Transparency
4. Legal certainty
5. Unity of Indonesian territory as a single market.

#### **Article 6**

- (1) The principle of simplification as stipulated in Article 5 number 1 is that the scope or coverage of business lines declared closed and open with conditions shall prevail nationally in simple manner and limited to the business line that is relevant to national interests hence it forms a small part of the overall economy and a small part of every sector in economy;
- (2) The principle of compliance to the international agreement or commitment as stipulated in Article 5 number 2 is that the business lines declared closed and open with conditions shall not contradicts Indonesia's obligations as stipulated in the ratified international agreement or commitment;
- (3) The principle of transparency as stipulated in Article 5 number 3 is that the business lines declared closed and open with conditions have to be clear, detailed, and do not cause multi-interpretation;

(4) The principle of legal certainty as stipulated in Article 5 paragraph 4 is that the business line declared closed and open with conditions cannot be changed except with a Presidential Regulation;

(5) The principle of unity of the Indonesian territory as a single market as stipulated in Article 5 number 5 is that the business line declared closed and open with conditions shall not prevent the flow of goods, services, capital, human resources and information in the territory of the unitary Republic of Indonesia.

## **CHAPTER IV USE OF CRITERIA**

### **Article 7**

The establishment of criteria of closed business line and open business line with conditions is based on the following considerations:

1. the market mechanism is not effective in achieving the goal;
2. the national interest cannot be better protected by other policy instruments;
3. the mechanism of closed and open business lines with conditions is effective to protect the national interests;
4. the mechanism of closed and open business lines with conditions is consistent to the need to solve problems faced by national entrepreneurs in relation to the foreign capital investment and/or problems faced by small entrepreneurs in relation to large capital investment in general;
5. the benefits of the implementation of mechanism for closed and open business lines with conditions exceed the cost incurred to Indonesia economy.

## **CHAPTER V CRITERIA OF CLOSED BUSINESS LINE**

### **Article 8**

The business lines that are closed for capital investment, both foreign and domestic are determined on the basis of the following criteria: health, safety, national defence and security, environment, moral, culture, and other national interests.

## **Article 9**

The criteria stipulated in Article 8 refer to, among others:

1. preserve the community's life structure;
2. protect the biodiversity;
3. maintain the balance of ecosystem;
4. the preservation of natural forest;
5. supervise the use of dangerous chemicals;
6. safeguard from fraud and the unplanned oversight/circulation;
7. maintain state sovereignty, or
8. protect and maintain limited resources.

## **Article 10**

The business lines that are declared closed shall prevail nationally in all Indonesian territory both for foreign investment and domestic investment.

## **CHAPTER VI**

### **CRITERIA OF OPEN BUSINESS LINE WITH CONDITIONS**

## **Article 11**

The criteria to establish open business line with conditions are:

1. the protection of natural resources;
2. the protection and development of micro, small, medium businesses and cooperatives;
3. the supervision of production and distribution;
4. the improvement of technological capacity;
5. the participation of domestic capital; and
6. the cooperation with the business appointed by the Government.

## **Article 12**

(1) The establishment of open business line with conditions are composed of:

- a. Open business line with the condition of protection and development of MSME.
- b. Open business line with the condition of partnership.
- c. Open business line with the condition of capital ownership.
- d. Open business line with the condition of specified location.
- e. Open business line with the condition of special permit.

(2) Open business line as stipulated in paragraph 1 point a can only be done based on the consideration of decent and feasible economy to protect MSME.

(3) Open business line as stipulated in paragraph 1 point b, is composed of reserved business line and unreserved business line with the consideration of business feasibility.

(4) Open business line as stipulated in paragraph 1 point c provides the limit to capital ownership for foreign investors.

(5) Open business line as stipulated in paragraph 1 point d provides the administrative territory permitted for investors to carry out investment activity.

(6) Open business line as stipulated in paragraph 1 point e can be in the form of recommendation from the government or non-government agency/institution that has the supervisory authority to a certain business line including in reference to the provisions of the law that stipulate monopoly or the requirement of cooperation with the State-Owned Enterprise (BUMN), in the business line.

(7) The requirements provided for investors in order to start the commercial operation/production are operational requirements, both technical and non-technical, which are regulated in the norms, standards and procedures established by the technical Minister that is relevant to the business line.

## **CHAPTER VIII**

### **RESERVED BUSINESS LINE AND PARTNERSHIP**

#### **Article 13**

The Government determines business line reserved for MSME and open business line with the condition of partnership.

#### **Article 14**

(1) The establishment of a business line reserved for MSME refers to, but not bound to the business scale of MSME, pursuant to the law.

(2) The types of business line stipulated in paragraph (1) are business lines reserved for MSME that do not have to be part of the list of open business line with conditions and business line reserved for MSME.



- (3) Business lines that are based on decency, feasibility and “economies of small scale”, if run by MSME, become a part of the list of open business line with conditions and business line reserved for MSME.
- (4) The establishment of the list of reserved business line for MSME as stipulated in paragraph (1), is done based on the proposal of the technical Minister that is relevant to the business line, after coordinating with the Ministry of Cooperative Small and Medium Enterprises, prioritizing MSME guidance program.

#### **Article 15**

- (1) Open business line with the condition of partnership is a business partnership between MSME and a large business, along with guidance and development from the large business with the principle of dependence, strengthening and mutual benefit.
- (2) Business line that obliges partnership between large scale investors and MSME as stipulated in paragraph (1) can be done with nucleus plasma scheme, sub contractors, general trade, agency and other types, but without any change in ownership of MSME and based on a written agreement.
- (3) The written agreement as stipulated in paragraph (2) is conditions for large scale investors to form a legal business entity.
- (4) Besides partnership for reserved business line for MSME as stipulated in paragraph (1), partnership can be done by large scale investors with MSME in accordance with its business permit as a permit requirement to start the commercial operation/production.

### **CHAPTER IX**

#### **FORMAL CLASSIFICATION OF BUSINESS FIELD**

#### **Article 16**

Closed business line and open business line with conditions shall be determined by using the Indonesian Formal Classification of Business Field (KBLI) at the most detailed level possible by the availability of KBLI, or by using the combination of other classification methods at the most detailed level possible.

**CHAPTER X**  
**ESTABLISHMENT SYSTEM**

**Article 17**

- (1) The list of closed business line and open business line with conditions shall be evaluated and revised regularly according to the economic development and national interests based on the assessment, findings and reports of investors.
- (2) The establishment of closed business line and open business line with conditions is coordinated by the Coordinating Minister of the Economic Affairs, which shall be further established in a Presidential Decree.
- (3) The Minister or Head of relevant agency shall propose the closed business line and open business line with conditions along with the supporting grounds to the Coordinating Minister of the Economic Affairs by using the criteria and considerations based on this Regulation.
- (4) The Coordinating Minister of the Economic Affairs shall form a team in order to assess, prepare, evaluate and revise the list of closed business line and open business line with conditions.
- (5) The Indonesia Investment Coordinating Board is responsible in coordinating the execution of this Presidential Regulation.

**Article 18**

The Presidential Regulation shall come into effect upon the date of its enactment.

**Enacted in Jakarta**

**On the date of July 3, 2007**

**THE PRESIDENT OF THE REPUBLIC OF INDONESIA**

**DR. H. SUSILO BAMBANG YUDHOYONO**