

# Exemption of Foreign Capital for Companies in IKN

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The development of the Indonesian capital city Nusantara (IKN) continues to roll out. This is not a temple building project with a target of completing the construction of 1000 temples in one night as in the legend of Prambanan Temple in Central Java. The development of IKN is the development of a city with the vision of a World City for All, a Smart City with targets for stages of development until the final completion in the year 2045. The city will be equipped with smart connectivity infrastructure and be sustainable: environmentally friendly with net zero emissions and in harmony with nature. It is also hoped that the city will be able to act as an economic driver in the future and as a source of national pride and identity.

The main challenge, of course, is financing. The government has determined that 20% of the IKN development budget will be taken from the State budget (APBN) and the remaining 80% will be a non-APBN budget, through financing and cooperation from the private sector, state owned companies (BUMN) and other forms of cooperation. The total development fund target of between 466 trillion and 486 trillion Rupiah until 2045 is not a small amount. The high funding needs, the majority of which will hopefully be obtainable outside of the APBN money, absolutely has to have support from the private sector.

In order to increase the private sector appetite for investing in IKN, the Government has launched various policies which have been outlined in various regulations. Among them is Government Regulation Number 12 of 2023 concerning Providing Business Licensing, Ease of Business, and Investment Facilities for Business Actors in IKN ("**PP Ease of Business**"), which provides many facilities and conveniences for investors. One of the provisions that provides ease of doing business for the private sector, especially for foreign investors, is regulated in Article 5 PP Ease of Doing Business, which regulates that provisions regarding requirements restricting foreign capital ownership in certain business fields will not apply to business licensing in IKN and its associated region (the area around IKN such as the cities of Balikpapan and Samarinda).

As we all know, Indonesia still has prohibitions and restrictions on foreign capital ownership for foreign investors who wish to do business in Indonesia, previously known as the negative list but now termed the positive list of investment. The aim of these restrictions has been to protect local business people and the national economy, especially Small, Micro and Medium Enterprises, from competition with powerful investors from abroad.

In general, it can be seen that there are two things that limit foreign capital ownership, the first of which is restrictions on business capital. Foreign companies that wish to establish companies and do business in Indonesia are required to establish a foreign investment limited liability company (PT PMA) with capital of at least Rp. 10 billion (excluding the value of land and buildings). For certain business fields, the value can be greater than Rp. 10 billion Rupiah, for example in the infrastructure or financial sectors. This value of 10 billion Rupiah puts PT PMA companies into the large-scale company category.

In addition to the restrictions in terms of capital and size of business entity, the second limiting factor is the limitation on the percentage of foreign share ownership in PT PMA. Presidential Regulation of the Republic of Indonesia Number 49 of 2021 concerning Amendments to Presidential Regulation Number 10 of 2021 concerning the Investment

Business Sector ("**Positive List Presidential Decree**") provides limits on foreign capital ownership for various business activities. These business activities include the processing of coffee which has a geographical indication, the manufacturing of stamped batik, the manufacturing of wooden building goods, the manufacturing of traditional cosmetics, the manufacturing of raw materials for traditional medicines for humans, the manufacturing of traditional medicinal products for humans, the manufacturing of ships: *Pinisi, Cadik*, other vessels made from wood with typical traditional designs; all of which are can only be carried out by domestic investment or 100% locally owned shares.

For main industries related to weapons such as: the manufacturing of weapons and ammunition industry, the manufacturing of military vehicles, defence radar industry for weapons systems, the manufacturing of warships, the manufacturing of military aircraft are required to have a maximum foreign capital ownership of 49%; or in the case of strategic interests, foreign capital may exceed 49% with the approval of the Minister of Defence. Likewise, business activities related to water and air transportation are in general each still limited to a maximum foreign share ownership of 49%.

The enactment of Article 5 PP Ease of Doing Business opens the door as widely as possible for foreign parties to invest capital by establishing a PT PMA located in IKN to carry out activities that were previously closed or restricted and can now be controlled 100%. If viewed from a legal perspective through the principle of the hierarchy of legislation, of course this is not a problem because exceptions to this limitation are legally possible due to the PP being higher in the hierarchy than the Presidential

Decree. Furthermore, the government could issue a new Presidential Decree that revises the Positive List Presidential Decree by adopting specific provisions that apply to companies established in the IKN area. However, it is necessary to think carefully about the possible implications for national interests, especially for business activities which have so far been safeguarded to provide benefits to MSMEs and regional entrepreneurs.

Regarding the shipping industry and water transportation business activities, there are important things that need to be underlined regarding the easing of foreign ownership in companies with these activities that are established in IKN. Restrictions on foreign ownership in the shipping industry and water transportation business activities (especially transportation in domestic waters) arise from the adoption of the Cabotage Principle in Indonesia. The Cabotage principle protects national shipping and national logistics business actors. This principle also has Defence and Security aspects to help support the sovereignty of national maritime areas. The Indonesian state upholds this principle and has confirmed it at the statutory level, namely in the Shipping Law, which has been amended by the Job Creation Law.

We certainly hope that opening up possible investment opportunities for foreign parties as widely as possible can accelerate the construction and development of IKN to achieve the vision of a World City for All. However, hopefully everything can proceed within an orderly legal corridor without ignoring the interests of domestic entrepreneurs, especially MSME entrepreneurs, and national interests.

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*The article above was prepared by Dentons HPRP's lawyers*

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