

Indonesia Launches Its Sovereign Wealth Fund

In line with President Joko Widodo's aim to boost the growth of Indonesia's national economy as well as to promote investment in Indonesia, the controversial Law on Job Creation (the "Job Creation Law"), also known as the Omnibus Law, was officially enacted on 2 November 2020. As many would consider this Omnibus Law to be an important milestone in structural reform in Indonesia, it is expected to strengthen monetary policy, provide a more accommodative fiscal policy, and accelerate infrastructure spending.

This Job Creation Law entails a certain relaxation in reducing the negative investment list, labor reform, easing licensing, land acquisition, and streamlining government administration.

This article will introduce features of the Indonesian Sovereign Wealth Fund. We will highlight the management structure, legal institution, the types of assets and the object of the investments made with the Sovereign Wealth Fund.

A. Central Government Investment

In relation to Central Government Investment, Part 1 of Cluster X, Article 154 Paragraph (3) of the Job Creation Law essentially provides that Central Government investment can be carried out by the following:

- a. The Minister of Finance as the State's General Treasurer, in accordance with the prevailing laws and regulations related to investment; or
- b. An Institution which is given special authority (*sui generis*) in the framework of investment management.

It is now established that central government investment may also be carried out by an entity other than the Minister of Finance, the Institution ("Sovereign Wealth"). The new understanding based on this Job Creation Law is that once a state asset becomes a central government investment, it becomes part of the Sovereign Wealth Fund and is no longer considered a state asset. However, this does not apply for state assets which contain or involve management of land, water and natural resources, as these will remain under the control of the state.

Under Article 157 of the Job Creation Law, the source of the Sovereign Wealth Fund's investments may originate from state assets, assets of state-owned enterprises, and/or other legal sources. As opposed to the previously more restrictive understanding of Sovereign Wealth, this provision then opens a wider range of possibilities in the nature of what can be part of the Sovereign Wealth Fund. Article 160 of the Job



Creation Law further stipulates that Sovereign Wealth may also be used as collateral.

The positive outcome that is expected from this is that it aims to provide flexibility in shaping the scheme for implementing government investment through the creation of an institution that has flexibility in terms of both governance and capital, thereby accelerating economic growth and creating new jobs to fill in the institution.

B. Investment Management Institution

Article 165 Paragraph (1) of the Job Creation Law provides as follows:

"In the framework of investment management as referred to in Article 154 paragraph (3) (b), under this Law, an Investment Management Institution is established for the first time."

The above Article provides that this is the first time that a specific institution is created for the sole purpose of managing the central government investment. Regarding this matter, Article 159 paragraph (2) of the Job Creation Law stipulates that in developing the value of its assets, the Sovereign Wealth Fund can do so by way of cooperating with third parties, namely through (i) Power of Attorney to Manage (*kuasa kelola*); (ii) the creation of a Joint Venture; and/or (iii) other forms of cooperation. The Job Creation Law also sets out that the capital of the Sovereign Wealth Fund may originate from various sources, namely from the equity capital of the state; business and asset development proceeds; the transfer of state assets or state-owned enterprises' assets; grants (*hibah*); and/or other legitimate sources.

As set out by Article 165 paragraph (3) of the Job Creation Law, this Institution comprises a Supervisory Board and a Board of Directors. Mirroring the checks and balances structure of the management composition of a Limited Liability Company under the Indonesian Legal Liability Companies Act Law No. 40 of 2007, this structure is being used in order to mitigate any risks of abuse of power. The members of organs and the employees of this Institution

cannot be state administrators, except for those state officials who are ex-officio members. The Board Directors will consist of 5 (five) professionals from the relevant field while the Supervisory Board will consist of:

- i. the Minister who is in charge of government affairs in the field of state finance, as chair and concurrently as a member;
- ii. the Minister who is in charge of government affairs in the field of state-owned enterprises, as a member; and
- iii. 3 (three) professionals from the relevant field, as members.

Further, Article 154 paragraph (4) (d) of the Job Creation Law provides that the right to determine the potential investment partners is conferred on this Institution. The Job Creation Law also provides in its elucidations that the mechanism for the appointment of potential business actors that are interested in being involved in the central government investment scheme will be further set out in a Government Regulation. Though the provision under Article 154 paragraph (4) letter d of the Job Creation Law states that the Minister of Finance or the Sovereign Wealth Fund may directly 'appoint' potential partners at their discretion, it is expected that this new process will accelerate and shorten the bureaucratic processes so that

in a more flexible manner. This differs from the common practices in the procurement processes of government institutions and state-owned enterprises that usually carry out tenders in order to determine the best candidates to run the project. Therefore, we hope that the Minister and/or the Institution will act in good faith and remain objective in appointing the potential partners, so as to still promote equal opportunities for all potential candidates who wish to get involved in the Sovereign Wealth Fund.

In terms of liabilities, the organs, employees and members of the management board of the Sovereign Wealth Fund will have a certain degree of immunity whereby they may not be held legally accountable for investment losses so long as they are able to prove that they are not accountable, as specifically set out in Article 163 of the Job Creation Act. Article 162 of the Job Creation Act further stipulate that the Sovereign Wealth Fund cannot be declared bankrupt unless it is proven to be insolvent.

In conclusion, it is fair to say that the launching of the Sovereign Wealth Fund reflects President Joko Widodo's cabinet's idea in their efforts to create a mechanism within the central government investments system that allows a more dynamic process in order to improve on the previous system, which was heavily encumbered by time consuming and taxing bureaucratic procedures.

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