

Omnibus Law to Reinvigorate Special Economic Area for Greater Investment Opportunities

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Under the recently issued Law No. 11 of 2020 on Job Creation (“**Omnibus Law**”), Chapter IX of the Law contains changes to the provisions on Economic Zones covering the amendment of (i) Law No. 39 of 2009 on Special Economic Zones (“**KEK Law**”); (ii) Law No. 36 of 2000 on Free Trade and Port Zones; and (iii) Law No. 37 of 2000 on Sabang Free Trade and Port Zone.

Special Economic Zones or “**KEKs**” are expected to boost interconnectivity, investment and economic development. The amendment of the KEK Law is intended to deliver better legal certainty while also enhancing cross-coordination and providing better government support for the development of KEKs.

We set out below some of the key changes introduced under the Omnibus Law.

New Sectors Under KEKs

There is an expansion of the business sectors and scope of industry that may operate under KEKs, whereby now they include the education and health sectors (although the education sector is subject to approval by the Central Government and the health sector must comply with certain requirements issued by the Central Government). The Omnibus Law does not specifically outline the requirements in respect of the education and health sectors, but we expect that the upcoming Government Regulations will further clarify and regulate these issues.

Governance of KEKs

The National Council of KEK, which is headed by the Coordinating Ministry of Economic Affairs, will have the authority to appoint a KEK Administrator, which will in turn become the licensing body for KEKs. This is contrary to the previous provision where the authority to appoint a KEK Administrator was within the Regional Council, whose members include Governor and Mayor/Regent where the KEK is located.

This change is expected to streamline the KEK governance process and to enhance the authority of the National Council to increase investment in KEKs.

The main goals for the formation of KEKs include:

- a. to maximise industrial, export and import activities;
- b. accelerate regional development;
- c. creating a model for area development; and
- d. job creation.

Ease of Doing Business

Several provisions have been added or amended in order to ease the process of doing business and to attract more investment into Indonesian KEKs. The new provision of Article 5 of the KEK Law no longer requires City/Regency Government's approval for KEK development proposals made by businesses to the National Council. Moreover, pursuant to the newly added provisions under Article 8A of the KEK Law, the Central and Regional Governments are now required to support all of the KEKs that have been determined.

Other than these changes in Governmental approval and support, there are other changes in the Omnibus Law that will potentially benefit business owners under KEKs, such as:

Land Acquisition – KEKs will now be given greater ease, acceleration, and special procedures for acquiring land titles and for their extension and/or renewal. This will be further regulated under the Minister of Agrarian/National Land Agency Regulation following the approval of the National Council. Regarding the location, the Omnibus Law streamlined the criteria whereby now prospective locations for KEKs development are no longer required to be located near international trade routes. However, the new provisions under the Omnibus Law have added a new criterion that requires a minimum of 50% progress for acquiring land from the total proposed land for KEKs development.

Licensing Process – The Omnibus Law stipulates that the KEKs Administrator will now serve as the licensing and supervising body for businesses operating in KEKs, but under supervision of the Regional Council. Although this is similar to what was previously regulated under the KEK Law, now the Omnibus Law defines clearly that the KEKs Administrator will now serve as the licensing and supervising body. Having said that, licensing criteria and procedures will be further regulated under upcoming implementing Government Regulations.

Foreign Employees – The concept of easing immigration procedures for foreign employees remains the same as under the previous KEK Law. However, in the Omnibus Law, it is specifically mentioned that the provisions on the easing of such immigration procedures will be regulated in an implementing Government Regulation. It is the Government's intention that the implementing regulation will provide certainty on the easing of procedures. However, it remains to be seen how this matter will be further regulated.

Incentives and Facilities –The Omnibus Law amends several articles regarding the incentives and facilities for businesses operating under KEKs (e.g. income tax facility, import facility, land and building acquisition duty and others). The details of the changes are further explained under subsequent Government Regulation.

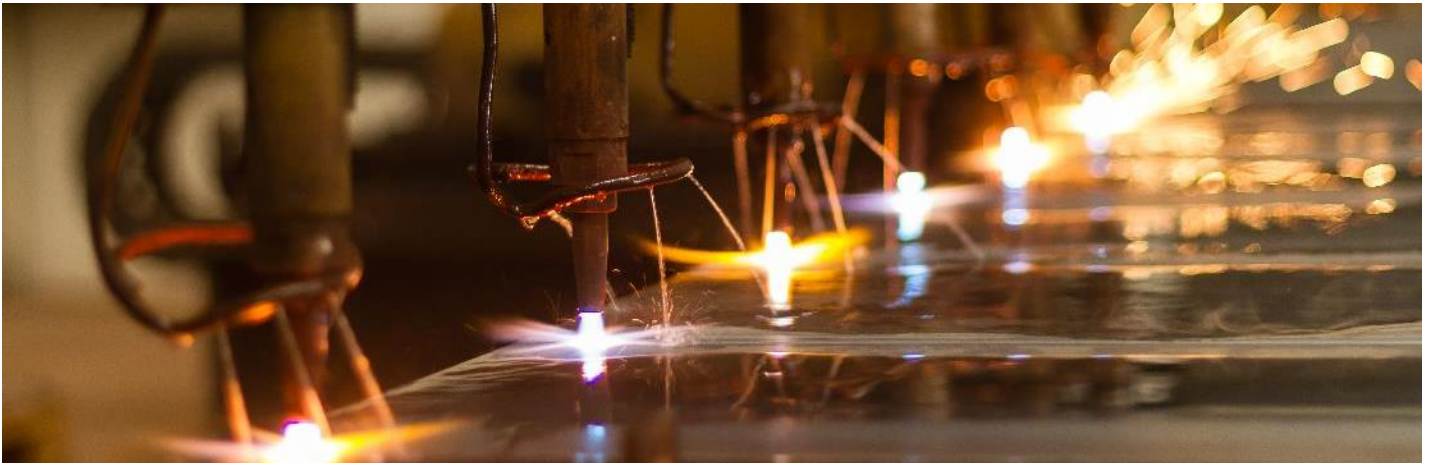
Ease of Import – Except where the imported goods are categorised as dangerous goods, the amended Article 27 of KEK Law regulates that there is no restriction as of yet for importing goods to the KEK. Furthermore, all

import and export provision implementation will be conducted through a nationally integrated electronic system developed by the central government.

What it all means

The above outlined changes to KEKs as stipulated under the Omnibus Law seem to promise to significantly improve the business environment for KEKs in Indonesia. However, to see how the implementation of the above changes could impact businesses in KEKs, we still need to wait for the issuance of the relevant implementing regulations that will specifically rule on the details. Nonetheless, these new changes are welcome and should provide a greater investment opportunity for business actors in Indonesia through KEKs.

In respect of the above, PwC Indonesia can help you in providing comprehensive legal, tax and business assistance if you are considering setting up business in a KEK. We can assist in all aspects from the establishment of a business in a KEK area, preparing and finalising agreements and legal documentation, providing tax and accounting support and any other business or legal assistance services you should need in relation to doing business in KEKs.



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