

TaxFlash



New Negative List of Investment

The Indonesian Government has issued Presidential Regulation (PR) No.44 Year 2016 (PR-44) that stipulates the new Negative List of Investment (NLI). PR-44 has been effective since 18 May 2016 and revokes the previous PR on NLI (i.e. PR No.39 Year 2014/PR-39). The issuance of this new NLI is based on the 10th Economic Policy Package announced by the Coordinating Minister for Economic Affairs in February 2016 and is intended to accelerate both foreign and domestic investments distributed across Indonesia and to develop the country's competitiveness in the international market. At the same time, this new NLI is also aimed at protecting national strategic businesses, as well as nurturing Indonesian small and medium enterprises (SMEs).

The new NLI sets out the following:

- To remove several public works, trading, creative economy, and health businesses from the NLI, resulting in these business lines being open for 100% foreign ownership.
- To increase the permitted foreign ownership in most sectors that may be subject to specific requirements, as well as increasing capital ownership in the context of Association of Southeast Asian Nations (ASEAN) cooperation, e.g. those in tourism and transportation sectors.
- To remove reservation of high voltage electricity, e-commerce, and certain health businesses for domestic investors, meaning that those businesses are now open for foreign investors at a certain percentage that may be subject to specific requirements.
- To remove specific recommendation requirements from the relevant Ministers (mainly in the agricultural sector), or to combine several business lines into one to ease the approval process (e.g. those in fishery and transportation sectors).
- To provide more protection for SMEs by reserving additional business lines for SMEs, increasing the project values in the construction sector that are reserved for SMEs, and adding several business lines that require a partnership with a local SME.
- To add two business lines that will be closed for any investment, i.e. extraction and distribution of coral for any purposes and lifting treasures from shipwrecks.

Conditions that annul requirements for business lines open for investment

PR-44 stipulates that business lines open with specific requirements will be completely open for investment if they meet the following conditions:

- the investment is made indirectly or through a portfolio the transactions of which are conducted in the domestic capital market; or
- the investment is conducted in Special Economic Zones, except for those businesses reserved for SMEs.

Changes in capital ownership

PR-44 also sets out the limit of capital ownership by a foreign investor in the event of a merger, acquisition or consolidation. Moreover, PR-44 also sets provisions for the actions that may be conducted by a foreign investor when its capital ownership exceeds the maximum limits due to capital increase for the purpose of business expansion.

Grandfathering clause

The implementation of investments on business lines regulated in PR-44 is not applicable for investments which have been approved prior to the issue of PR-44, unless that provision is more beneficial for the investment.

Summary of changes

Below are the changes in the NLI that are relevant to foreign direct investment into Indonesia.

A. Energy and Mineral Resources

No.	Lines of Business	PR-39	PR-44
1	Geothermal power plants with capacity \leq 10 MW	<ul style="list-style-type: none">• Power plants \leq 1 MW are only permitted to have 100% domestic ownership• Small scale power plants (1-10 MW) are permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
2	Production of pellet fuels	Partnership with SMEs	Open to have 100% foreign ownership
3	High and middle voltage electricity installation	Closed for foreign ownership (100% domestic ownership)	Permitted to have 49% foreign ownership
4	Examining and testing electricity supply installations	Closed for foreign ownership (100% domestic ownership)	Permitted to have 49% foreign ownership
5	Examining and testing high/extra high voltage electricity utilization installations	Closed for foreign ownership (100% domestic ownership)	Permitted to have 49% foreign ownership

B. Industry

No.	Lines of Business	PR-39	PR-44
1	Granulated sugar	Reserved for SMEs	Open to have 100% foreign ownership subject to partnership with SMEs
2	Crumb rubber	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership subject to license from the Minister of Industry

C. Public Works

No.	Lines of Business	PR-39	PR-44
1	Toll roads	Permitted to have 95% foreign ownership	Open to have 100% foreign ownership
2	Non-hazardous waste management	Permitted to have 95% foreign ownership	Open to have 100% foreign ownership
3	Construction performance services with project values over IDR 50 billion	Permitted to have 67% foreign ownership	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
4	Construction consultancy services with project values over IDR 10 billion	Permitted to have 55% foreign ownership	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States

D. Trade

No.	Lines of Business	PR-39	PR-44
1	Direct selling	Permitted to have 95% foreign ownership	Open to have 100% foreign ownership
2	Department Store with area size 400 - 2,000 m ²	Closed for foreign ownership (100% domestic ownership)	Permitted to have 67% foreign ownership if integrated to a mall and subject to license from the Minister of Trade
3	Retailer via post and internet	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership subject to partnership with SMEs
4	Distributor affiliated with production	Permitted to have 33% foreign ownership	Open to have 100% foreign ownership
5	Distributor not affiliated with production	Permitted to have 33% foreign ownership	Permitted to have 67% foreign ownership
6	Warehouses	Permitted to have 33% foreign ownership	Permitted to have 67% foreign ownership
7	Cold storage	Permitted to have foreign ownership of (a) 33% if in Sumatra, Java and Bali <u>or</u> (b) 67% if in Kalimantan, Sulawesi, Nusa Tenggara, Maluku and Papua	Open to have 100% foreign ownership
8	Survey/poll activities	100% domestic ownership <u>or</u> permitted to have 51% ownership for investors from ASEAN member States	100% domestic ownership <u>or</u> permitted to have 70% ownership for investors from ASEAN member States
9	Futures broker	Permitted to have 95% foreign ownership	Open to have 100% foreign ownership

E. Tourism and Creative Economy

No.	Lines of Business	PR-39	PR-44
1	Private museums	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States

No.	Lines of Business	PR-39	PR-44
2	Historical sites managed by private entities	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
3	Travel bureaus	Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
4	Restaurants	Permitted to have 51% foreign ownership	Open to have 100% foreign ownership
5	Food (catering) services	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
6	Bars	Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs	Open to have 100% foreign ownership
7	Café	Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs	Open to have 100% foreign ownership
8	2-star hotels	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership
9	1-star hotels	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership
10	Non-star hotels	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership
11	Motels	<ul style="list-style-type: none"> Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs Permitted to have 70% ownership for investors from ASEAN member States if located in Java and Bali 	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
12	Billiard places	Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
13	Bowling centres		Open to have 100% foreign ownership
14	Swimming		
15	Soccer		
16	Tennis		
17	Fitness centres		
18	Sport centres and other sport activities		
19	Golf courses	<ul style="list-style-type: none"> Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs Permitted to have ownership from ASEAN member States of: 100% if located outside Java and Bali <u>or</u> 70% if located in Java and Bali 	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States

No.	Lines of Business	PR-39	PR-44
20	Art impresario services	Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
21	Karaoke bars	Permitted to have 49% foreign ownership <u>or</u> 51% if in a partnership with SMEs	Permitted to have 67% foreign ownership
22	MICE (Meeting, Incentive, Conference, and Exhibition) services	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
23	Natural tourist attractions outside conservation areas	Permitted to have 51% foreign ownership	Permitted to have 67% foreign ownership
24	Film studio	Permitted to have 49% foreign ownership	Open to have 100% foreign ownership
25	Film processing laboratories	Permitted to have 49% foreign ownership	Open to have 100% foreign ownership
26	Film dubbing facilities	Permitted to have 49% foreign ownership	Open to have 100% foreign ownership
27	Film printing or duplication facilities	Permitted to have 49% foreign ownership	Open to have 100% foreign ownership
28	Film shooting facilities	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership
29	Film editing facilities	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership
30	Film subtitling facilities	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership
31	Film production	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership
32	Movie theatre	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership
33	Recording studio (cassettes, VCDs, DVDs)	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership
34	Film distribution	Closed for foreign ownership (100% domestic ownership)	Open to have 100% foreign ownership

F. Transportation

No.	Lines of Business	PR-39	PR-44
1	International sea transportation for passengers and goods (excluding cabotage)	Permitted to have 60% ownership for investors from ASEAN member States	Permitted to have 70% ownership for investors from ASEAN member States
2	Port facilities (jetty, building, cargo, handling terminal, liquid and dry bulk terminals, Ro-Ro terminal)	Permitted to have 49% foreign ownership <u>or</u> 95% if in a public private partnership arrangement	Permitted to have 49% foreign ownership subject to license on minimum capital
3	Salvage services and/or underwater works	Permitted to have 49% foreign ownership	Open to have 100% foreign ownership subject to license from the Minister of Transport
4	Terminal supporting businesses	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership

No.	Lines of Business	PR-39	PR-44
5	Air transportation supporting services	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
6	Airport related services	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
7	Maritime cargo handling services	Permitted to have 49% foreign ownership or 60% ownership for investors from ASEAN member States	Permitted to have 67% foreign ownership or 70% ownership for investors from ASEAN member States
8	Transportation management services	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
9	Air cargo expedition services	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
10	General sales agent for foreign airlines	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
11	Management of crossing ports	Cooperation with a company appointed by the Government	Permitted to have 49% foreign ownership
12	Management of river and lake ports	Cooperation with a company appointed by the Government	Permitted to have 49% foreign ownership
13	Land transportation for passengers	Closed for foreign ownership (100% domestic ownership)	Permitted to have 49% foreign ownership

G. Communication and Informatics

No.	Lines of Business	PR-39	PR-44
1	Telecommunication network providers	Permitted to have 65% foreign ownership	Permitted to have 67% foreign ownership
2	Telecommunication services	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
3	Integrated telecommunication network and services	Permitted to have 65% foreign ownership	Permitted to have 67% foreign ownership
4	Telecommunication equipment testing laboratories	Permitted to have 95% foreign ownership	Open to have 100% foreign ownership
5	Sales via electronic platforms (marketplace, daily deals) with investment value ≤ IDR 100 billion	Not regulated, so in practice open to have 100% foreign ownership	Permitted to have 49% foreign ownership

H. Health

No.	Lines of Business	PR-39	PR-44
1	Raw pharmaceutical materials industry	Permitted to have 85% foreign ownership	Open to have 100% foreign ownership
2	Business management consultancy services or hospital management services	Permitted to have 67% foreign ownership	Open to have 100% foreign ownership
3	Healthcare equipment testing	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership
4	Pest control services	Closed for foreign ownership (100% domestic ownership)	Permitted to have 67% foreign ownership
5	Medical evacuation and ambulatory	Closed for foreign ownership (100% domestic ownership)	Permitted to have 67% foreign ownership

No.	Lines of Business	PR-39	PR-44
6	Hospitals	<ul style="list-style-type: none"> Permitted to have 67% foreign ownership throughout Indonesia Permitted to have 70% ownership for investors from ASEAN member States if in capital cities of the eastern part of Indonesia (except Makassar and Manado) 	<p>Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States</p> <p>Investment should be made in capital cities of the eastern part of Indonesia (except Makassar and Manado)</p>
7	Other hospital services (mental rehabilitation clinics)	Permitted to have 67% foreign ownership	Permitted to have 67% foreign ownership
8	Specialized medical clinics	<ul style="list-style-type: none"> Permitted to have 67% foreign ownership throughout Indonesia Permitted to have 70% ownership for investors from ASEAN member States if in capital cities of the eastern part of Indonesia (except Makassar and Manado) 	Permitted to have 67% foreign ownership <u>or</u> 70% ownership for investors from ASEAN member States
9	Specialized dental clinics		
10	Specialized nursing clinics	<ul style="list-style-type: none"> Permitted to have 49% foreign ownership throughout Indonesia Permitted to have ownership from ASEAN member States of: 51% if in Makassar and Manado <u>or</u> 70% if in other capital cities of the eastern part of Indonesia 	Investment should be made in capital cities of the eastern part of Indonesia (except Makassar and Manado)
11	Medical equipment lease	Permitted to have 49% foreign ownership	Open to have 100% foreign ownership
12	Laboratory clinic, medical check-up clinic	Permitted to have 67% foreign ownership	Open to have 100% foreign ownership
13	Healthcare equipment supplier	Open to have 33% foreign ownership	Permitted to have 49% foreign ownership subject to license from the Minister of Health
14	Class A healthcare equipment industry	Not regulated, so in practice open to have 100% foreign ownership	Permitted to have 33% foreign ownership subject to license from the Minister of Health
15	Class B, Class C, and Class D healthcare equipment industries	Not regulated, so in practice open to have 100% foreign ownership	Open to have 100% foreign ownership subject to license from the Minister of Health
16	Stem cell banks and laboratories	Not regulated, so in practice open to have 100% foreign ownership	Open to have 100% foreign ownership subject to license from the Minister of Health

I. Other business sectors

No.	Sector	Lines of Business	PR-39	PR-44
1	Finance	Credit guarantee company	Open to have 100% foreign ownership	Permitted to have 30% foreign ownership
2	Manpower and Transmigration	Work training (including non-formal education)	Permitted to have 49% foreign ownership	Permitted to have 67% foreign ownership

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