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JOB CREATION LAW: SIMPLIFICATION OF INVESTMENT REQUIREMENTS AND ITS LICENSING

The Job Creation Bill was finally promulgated as Law No. 11 of 2020 concerning Job Creation ("**Job Creation Law**") on 2 November 2020. This Job Creation Law is over 1.187 pages long, consists of 186 articles, which ultimately amends 78 prevailing legislations. The main aim of the Job Creation Law is to boost investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

As for the investment sector in particular, the Job Creation Law simplifies the licensing process and investment requirements for certain business sectors by amending and revoking provisions in various relevant regulations to investment. It also intended to empower and protect micro, small and medium enterprises ("**MSMEs**") and forms a sovereign wealth fund with the function to invest and manage Government funds and assets.

Below are the notable changes under the Job Creation Law related to the investment requirements and business licensing:

1. Relaxation of Negative Investment List

One of the provisions on the Job Creation law that will give major positive impact to foreign investors is the expansion of business activities that are open to foreign investment whereby the Job Creation Law has transformed the current Negative Investment List of business activities that are closed, wholly or partially, to investment into a Positive Investment List. Thus, the Job Creation Law amends the business activities open to investment under the Law No. 25 of 2007 concerning Capital Investment ("**Investment Law**").

Previously, the exception to business activities open for investment under the Investment Law was the business activities that are stipulated to be closed to, or conditionally open for, investment.

Under the Job Creation Law, currently all business activities are open for investment, except for those stated to be closed for investment and which are reserved for the Central Government. Based on the Job Creation Law, business activities that are closed for investment are:

- a. the cultivation and trading of class I narcotics;
- b. all forms of gambling and/or casino activities;

- c. fishing for species listed in Appendix I to the Convention on International Trading in Endangered Species of Wild Fauna and Flora (CITES);
- d. utilizing or taking coral and utilizing or taking of reefs from nature to be used as building materials/lime/calcium, in aquariums, or to make souvenirs/jewelry, both live corals and dead corals from nature;
- e. the chemical weapons manufacturing industry; and
- f. the chemicals industry and any harmful to the ozone layer materials industry.

The investment requirements will be further regulated under a Presidential Regulation. It is also expected that the detailed amendment of the regulation governing the Investment List would be issued by the Government in which currently is regulated under the Presidential Regulation No. 44 of 2016 concerning the List of Business Fields that are Closed and Business Fields that are Open with Conditions to Investment.

2. Simplification of Investment Licensing and Introducing the Risk-Based Business Licensing

The Job Creation Law simplifies investment licensing by eliminating the need for business actors to obtain a location permit. Instead of obtaining a location permit, business actors will only have to ensure that their business location conforms to the relevant Detailed Spatial Plan (*Rencana Detail Tata Ruang/RDTR*). If the location conforms to the RDTR, the business actor will only be required to input the business location coordinates to the Online Single Submission (OSS) system. The Job Creation Law also amends and simplify the procedures for environmental approvals, building construction approvals (*Izin Mendirikan Bangunan/IMB*) and function feasibility certificate (*sertifikat laik fungsi/SLF*) whereby the application and approval of such licenses will be centralized in the central government through the Online Single Submission (OSS) system.

Furthermore, the Job Creation Law also introduces risk-based business licensing by determining the: (i) the risk level; and (ii) the business scale rating of the business activities. It is determined based on the assessments on the actual and potential hazard levels.

The hazard level depends on the assessment of the following aspects:

- a. health;
- b. safety;
- c. the environment; and/or
- d. the use and management of resources.

However, other aspects may be assessed depending on the nature of the business activities.

The hazard level assessment takes into account:

- a. the type of business activities;
- b. the criteria for the business activities;
- c. the location(s) of the business activities;

- d. limited resources; and/or
- e. the volatility risk.

Based on the above assessments, the risk level and the business scale rating of the business activities will be determined as follows:

a. Low-Risk Business Activity

Only required to obtain a business identification number (*Nomor Induk Berusaha*/"NIB").

b. Medium-Risk Business Activity

An NIB and a standard certificate are required to engage in the business activities (depending on whether the risk is low medium of which a statement from the business actor will suffice; or medium high of which a certificate must be obtained from the Central or Regional Government). In addition, if the business is required to meet certain business and product standards, the Central or Regional Government will issue standards certificates based on the results of a verification that the standards are being met;

c. High-Risk Business Activity

In this level, it is required to obtain an NIB and license in the form of an approval issued by the central or regional Government for the business actors to conduct their business activities. Companies involved in certain business activities will also be required to obtain a business standards certificate and product standards certificate issued by either the central or regional Government.

An implementing regulation in the form of Government Regulation will be issued to regulate the implementation of business licensing for each risk level and the supervision of the business activities.

3. Empowerment and Protection of MSMEs

The Job Creation Law mandates the Government to reserve certain business activities for MSMEs and cooperatives, the Job Creation Law also stipulates that the Central and Regional Governments, in accordance with their respective authority, shall provide facilities for and empower and protect MSMEs. Such empowerment and protection shall now also include human resources training and access to funding.

4. Changes to the Company Law

The Job Creation Law amends several articles of the Law No. 40 of 2007 concerning Limited Liability (the "**Company Law**") which mostly give attention to the micro and small-scale businesses. The important amendments of the Company Law governed under the Job

Creation Law, which are aimed to support the micro and small-scale businesses operating in Indonesia, are among others:

a. No Minimum Number of Shareholder for Establishing Limited Liability Company

Previously, Article 7 of the Company Law stipulates that a Limited Liability Company (*Perseoran Terbatas*/"PT") can only be established by two or more people (or legal entities). The Job Creation Law amends the requirement for certain PT whereby the definition of PT is now expanded to include individual legal entities that meet the criteria for a micro or small-scale business.

Currently under the Job Creation Law, it is stipulated that there is no minimum number of people required to establish a micro or small business. Furthermore, this provision also applies to a PT that manages the stock exchange, clearing and guarantee institutions, securities depositories, settlement institutions and other institutions under the Capital Market Law.

As such, with the above mentioned change, a PT that is categorized as a micro or small business may be established by a single person/legal entity.

b. No Minimum Authorized Capital

The Job Creation Law removes the provision of the minimum authorized capital requirement for a PT under the Company Law whereby it is stipulated that the authorized capital of a PT is now to be determined by its founder(s).

Furthermore, the provisions on authorized capital will be further regulated under a Government Regulation.

5. Supervision and Monitoring

The Job Creation Law also regulates administrative sanctions for business licensing violations. These administrative sanctions can be in the form of: (i) warnings; (ii) temporary suspension of business activity; (iii) fines; (iv) police action to cease business activities; (v) revocation of license/certification/approval; and/or (vi) revocation of business license.

Further provisions on the implementation of administrative sanctions will be regulated on a Government Regulation issued by the Government.

5. Transitional Provisions

All business licenses from various sectors issued prior to the issuance of the Job Creation Law shall be valid in accordance with the Job Creation Law until their expiration. Business licenses that are still in the application process must conform to the licensing procedures under the Job Creation Law.

Note: The content of this article does not constitute legal advice and should not be relied upon since there will be implemented regulation(s) to be further issued. The judge's opinion may also be different, due to the facts relevant to the case. If you need specific advice related to this topic, please contact us by email through info@yangandco.com.