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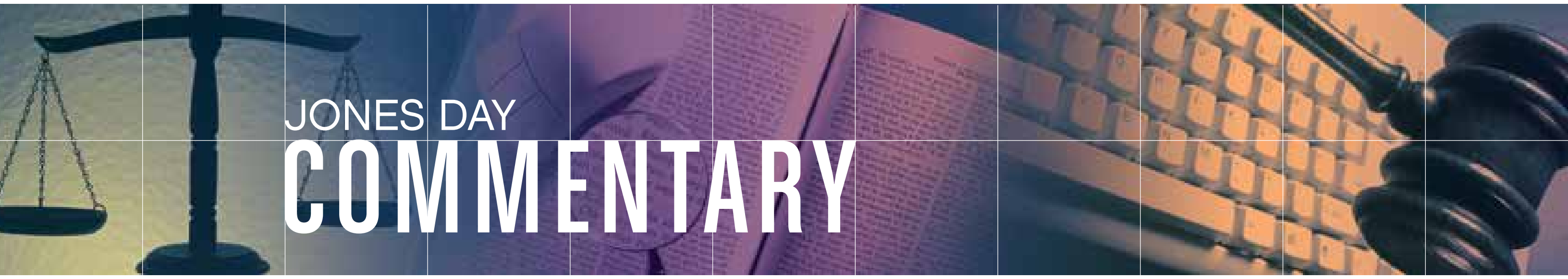

INDONESIA: TURNING THE NEGATIVE LIST INTO A POSITIVE

THE GOOD . . .

The government of Indonesia has announced that it will release two additional fiscal policy packages, which broadly aim to reduce Indonesia's current account deficit, improve financial stability, and stimulate growth.

The new policies will focus on restraining imports and expanding exports as well as boosting foreign investments in the country. As such, the measures will include tax incentives to attract foreign direct investment and the opening up of several market sectors to foreign investment through a revision of the country's negative investment list, which has historically limited foreign investment in some of the most profitable sectors of the Indonesian economy.

Revising the negative investment list has been widely seen as an important step in attracting more foreign investment in Indonesia and stimulating the economy. Indeed, the government of Indonesia is planning to mitigate the slowing trend in economic growth, and foreign direct investment in particular, by kick-starting reforms and improving procedures for investment.

THE BAD . . .

The new policies are in addition to the emergency measures that were taken in August 2013 to restore Indonesia's financial stability in the context of market turmoil brought on by uncertainty about the Federal Reserve's quantitative easing program, falling commodity prices, a depreciating rupiah exchange rate, high inflation, and slowing economic growth.

Indonesia's current account deficit slipped to a record US$9.8 billion in the second quarter of 2013, equivalent to 4.4 percent of GDP. In the third quarter of 2013, the current account deficit eased slightly to US$8.4 billion, equivalent to 3.8 percent of GDP.

The easing deficit was supported by Bank Indonesia's 1.75 percent rate rise in June 2013, but the central bank has recently indicated that it expects the country's current account deficit to remain wide and, quite possibly, above 3 percent in 2014, given lower commodity prices and the impact of the mineral export ban.

In addition, and in the context of the widening deficit, the Indonesia Investment Coordinating Board (the "BKPM") has reported that foreign direct investment in Indonesia fell in U.S. dollar terms for the first time in two years in 2013. According to the BKPM, foreign direct investment fell from US$7.2 billion in the second quarter of 2013 to US$7 billion in the third quarter of 2013.

The World Bank recently downgraded its GDP growth forecasts for Indonesia, which expanded at an average of 6 percent per year in the previous five years, to 5.6 percent for 2013 and 5.2 percent for 2014. The International Monetary Fund forecasts growth of between 5 percent and 5.5 percent for 2014.

THE NEGATIVE LIST . . .

There has sometimes been the perception among foreign investors that Indonesia welcomes foreign investment on its own terms and that this is reflected in the way that foreign investment is regulated in the country.

For example, foreign investment is approved and monitored through governmental bodies, companies are restricted in the limited number of expatriates that can be employed (and who eventually are required to be replaced by Indonesians), and investment by foreigners in certain business sectors is restricted.

Law No. 25/2007 concerning Investment (the "Foreign Investment Law") regulates foreign direct investment in Indonesia by granting a right of entry to foreign businesses through a government licensing procedure principally controlled by the BKPM.

Generally speaking, foreigners are permitted to invest with no restriction on the maximum size of the investment, percentage of ownership, source of funds, or whether the products are destined for export or for the domestic market. However, investment in industry sectors listed as restricted to foreign investment on the negative investment list (the "Negative List"), which attaches to the Foreign Investment Law under Presidential Regulation, are subject to limits of varying degrees.

The Negative List details what fields in the Indonesian economy are partially or completely open to private investors. It also stipulates the maximum percentage of foreign ownership allowed in fields open to foreign investments. If a business field is not mentioned in the Negative List, it is conceptually regarded as "open" to foreign investment.

POSITIVE THINKING . . .

The Indonesian government initially announced that the revised Negative List would contain only 14 fields closed to foreign investments. The current list limits foreign investors from entering 20 fields. However, the government stepped back from its earlier plans to open airports and seaports to greater foreign investment and has opted for slightly more limited revisions.

Nevertheless, Indonesia is still easing restrictions on foreign investment in several business fields, and thereby providing greater access to the economy. It is not yet clear when the revisions will become effective as the decree amending the Negative List remains to be finalized and signed by Indonesia's President Susilo Bambang Yudhoyono.

The upcoming revisions will incrementally reduce restrictions on investments in pharmaceuticals as well as advertising agencies and power plants as set out in the following table.

Sector	Previous Maximum Foreign	Revised Maximum Foreign Investment
Pharmaceuticals	75 percent	85 percent
Advertising Agencies	49 percent	51 percent
Power plants	95 percent	100 percent*

* *For projects operated as public–private partnerships.*

The revised Negative List will also clarify the regulations regarding which ministry will hold sway over a specific field. Currently, for instance, the Ministry of Industry and the Ministry of Health both regulate the pharmaceutical industry in Indonesia.

The revision of the Negative List was initially announced by Finance Minister Chatib Basri at the Asia–Pacific Economic Cooperation CEO Summit in early October 2013, and a further announcement was made on December 24, 2013 by Chief Economic Minister Hatta Rajasa. Basri and Rajasa are certainly attempting to turn recent negatives into positives and hope that pushing through investor-friendly reforms and rolling back protectionist measures will give the Indonesian economy an important lift.

LAWYER CONTACTS

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