

How the Omnibus Law will Simplify Investment in Indonesia



The fourth edition of “Omnibus Law 2020: Overview Series” will highlight changes in investment sector.

Many hoped that investing in Indonesia will be simpler for investors after the Omnibus Law becomes effective. One of the ways in which the Omnibus Law seeks to simplify investment in Indonesia is by maximising the potential of the One Stop Service (“OSS”) system. Despite being in operation since 2018, the OSS still operates in conjunction with manual licensing application or process. Investors often have to juggle both processes to achieve the desired outcome.

Shift into Risk-Based Licensing System

HIGH RISK
Business registration, license, and standard certifications.
MEDIUM - HIGH RISK
Business registration and standard certifications.
MEDIUM - LOW RISK
Business registration and statement on compliance with applicable standards.

LOW RISK

Business registration only.

- The implementing regulations to the Omnibus Law will detail further the types of business and the related risk level.
- Licenses issued before the Omnibus Law will remain valid; but no clarity on what will happen to licenses that are valid indefinitely.

Proposed Abolishment of the Negative Investment List

Once the Omnibus Law becomes effective, we expect that the government will issue an investment priority list in a presidential regulation, which will include a list of prioritised business sectors, fiscal incentives and non-fiscal incentives for various business sectors, and reserved business sectors for micro, small and medium enterprises and those that are open for investment under certain conditions.

While the Omnibus Law revokes articles regulating foreign investment threshold under many industry specific regulations, there are those that have not been revoked. It is unclear whether these industry-specific regulations will still apply.

No doubt investors are looking forward to the new presidential regulation. We anticipate that this regulation will be part of the implementing regulations that will be issued within the next three months.

Restricted Investment

Under the Omnibus Law, investment in the following sectors are restricted:

Cultivation and industry of narcotics class I.

Industry of chemical weapons manufacturing.

All forms of gambling and/or casino activities.

Industry of industrial chemicals and industry of ozone depleting substances.

Capture any fish species as set forth in Appendix I Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Utilisation and collection of coral and utilisation and collection of corals from nature which are used for building materials/limestone/calcium, aquarium, and souvenirs/jewellery, as well as live and dead coral (recent death coral) from nature.

No Requirement on Minimum Authorised Capital

- The Omnibus Law allows the founders of a company to determine the amount of the minimum authorised capital. But this provision does not apply to PT PMA.
- Note that some regulations that regulate minimum authorised capital have not been revoked.

Companies Exempted from the “at least 2 shareholders” Requirement

The Omnibus Law expands the list of limited liability companies that are exempted from the requirement to have two or more shareholders:

1. state-owned enterprises whose shares are entirely owned by the state;[^]
2. regional government-owned enterprises (Badan Usaha Milik Daerah);
3. village government-owned enterprises (Badan Usaha Milik Desa);
4. companies who manage stock exchange, clearing and underwriting institution, central securities depository and other institutions in accordance with the law on capital markets;[^] or
5. companies who meet micro and small enterprises criteria.

[^] Types of companies that are exempted as previously regulated under the Companies Law..

Revocation of the Nuisance Law (Hinderordonnantie)

The 1926 Staatsblad No. 226, in conjunction with 1940 Staatsblad No. 450 on Nuisance Law (Hinderordonnantie) requires entrepreneurs to obtain a nuisance permit before carrying out certain business activities.

The Minister of Home Affairs Regulation No. 27 of 2009 (which was revoked by the Minister of Home Affairs Regulation No. 19 of 2017) generally defines nuisance permit as a permit for a location of business/activity in certain area that may cause danger, loss and disturbance, excluding the place of business/activity that has been determined by the government.

The Omnibus Law revokes the Nuisance Law. Thus, entrepreneurs are no longer required to obtain a nuisance permit.

Revocation of the Companies Registration Law

Under Law No. 3 of 1982 on Mandatory Companies Registration ("Company Registration Law"), all companies in Indonesia must be registered in a company register maintained by the company registration office. Once registered, a company will receive a Company Registration Certificate (Tanda Daftar Perusahaan) or a registration number.

After the launch of the OSS system, the law mandates that each company must now obtain a Business Identification Number (Nomor Induk Berusaha or "NIB"), which also serves as a Company Registration Certificate. At the same time, many regional company registration offices stopped accepting company registration application. As a result, many entrepreneurs faced uncertainty as they were unable to comply with the law.

The position is now clarified under the Omnibus Law as it revokes the Company Registration Law, and companies are now only required to obtain an NIB.

It has come to our attention that there are multiple drafts of the bill in public circulation. Analysis may differ depending on which version of the draft is used as the basis. We continue to monitor this evolving situation, with various teams currently examining the bill to produce updates that are relevant to you. As always, we are committed to supporting you with advice and guidance. You can find our alerts on the Omnibus Law [here](#).

If you have any questions or concerns, please contact our attorneys or the BD team at BD@ahp.id.

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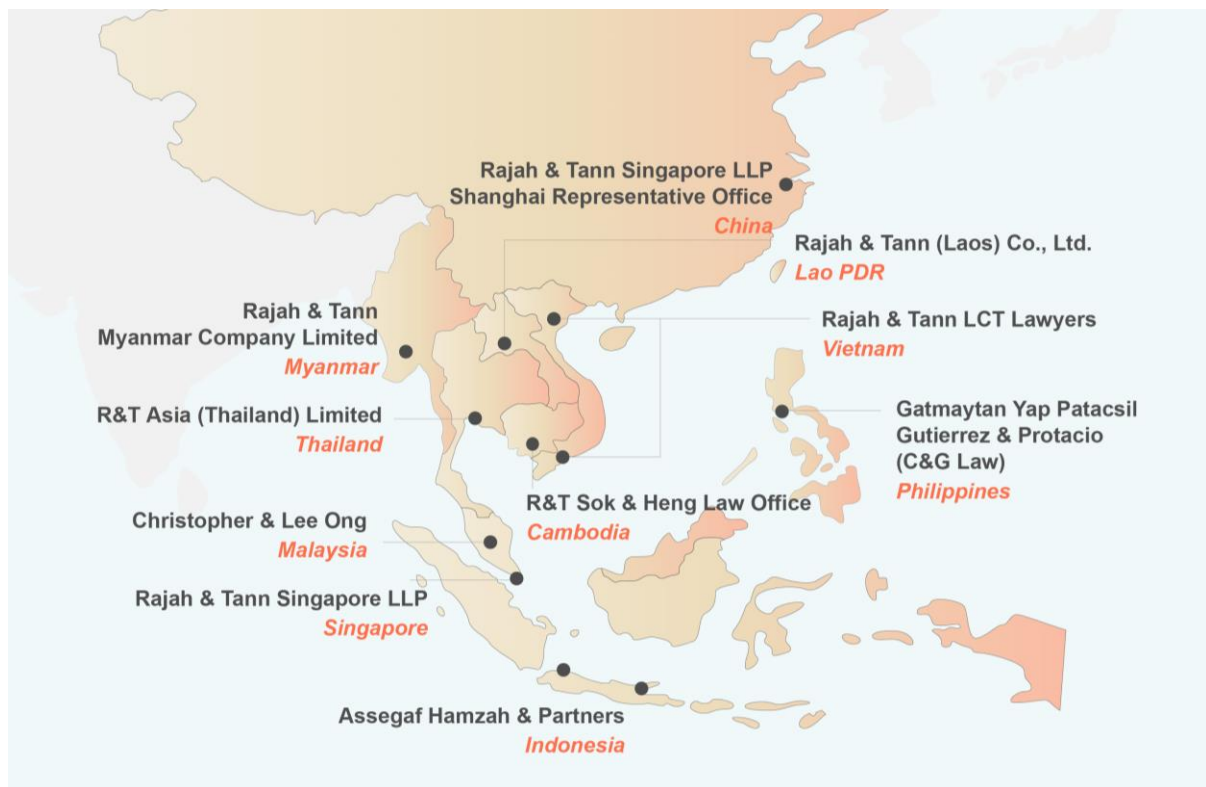
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