

Overview of foreign investment in ports

by Ferdinand Julaga, S.H. with research by Jean Viola, S.H.

Foreign investment restrictions

On 24 April 2014, the Government issued Presidential Regulation No. 39 of 2014 (the “**Negative Investment List**”) replacing the previous negative investment list, i.e. Presidential Regulation No. 36 of 2010. Under the Negative Investment List, foreign ownership in carrying out the following business is still allowed up to 49 percent:

- a. the provision of port facilities (i.e. jetty, building, vessel tug service, container terminal, liquid bulk terminal, dry bulk terminal and roll on-roll off terminal);
- b. the provision of water reception facilities at ports;
- c. salvage service and/or underwater work;
- d. supporting services at terminals; and
- e. maritime cargo handling services.

For point (a) and (b) above, the Negative Investment List provides that the foreign capital ownership limit is allowed up to 95 percent if it is developed in a Private-Public Partnership (PPP) scheme. With regard to maritime cargo handling services (point (e) above), the Negative Investment List also increases the foreign capital ownership limit for investors from ASEAN countries to 60 percent.



Port operating license

In accordance with Government Regulation No. 61/2009, concerning Ports (“**GR 61/2009**”), a port operating license (*Izin Pengoperasian Pelabuhan*) is required for the operation of port and is issued by (i) the Minister of Transportation for main ports and hub ports, (ii) the governor for regional feeder ports and (iii) the regent/mayor for local feeder ports and river and lake ports. The requisites to obtain a port operating license are as follows:

- a. the port or terminal construction has been completed pursuant to the relevant port construction license;
- b. availability of shipping safety and security;
- c. provision of facilities to ensure the smooth flow of passengers and cargoes;

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- d. availability of an environmental management system;
- e. availability of entities to perform the relevant activities at the port;
- f. availability of service system and procedures; and
- g. availability of human resources in the technical field of port operation with the necessary competence and qualifications, evidenced by the relevant certification.

Concession and other cooperation agreements

A concession can be granted to a port operating company for business activities relating to ship, passenger and/or cargo facilities and services pursuant to an agreement and through the mechanism of a public tender. The term of the concession is adjusted according to a calculation of a reasonable period of investment return and profit. GR 61/2009 provides that a concession agreement must contain at least the following:

- the scope of the business;
- the period of concession term;
- the preliminary tariff and tariff adjustment formula;

- the rights and obligations of the parties, including the risks to be respectively borne by the parties in accordance with efficient and fair allocation risk principles;
- standard service performance as well as the procedures for the handling of public complaints;
- the sanctions to be imposed in the event of default;
- a dispute settlement mechanism,
- provision for termination of the agreement;
- provision designating Indonesian law as the law governing the contract;
- provision for force majeure events; and
- amendments.

Upon expiry of the concession period, the port facility generated out of the concession must be transferred to the port authority (or port administrator unit). Such transferred port facility is to be further managed by a port operating company, subsequent to another mechanism of auction for port operation in accordance with a utilization agreement. The maximum period for the utilization agreement is 30 (thirty) years.